

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

April 8, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 8, 2004, at 12:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Morris K. Dunlap, Vice-Chair; James Barfield; Bud Hentzen; John W. McKay Jr.; Bill Johnson; Elizabeth Bishop; M.S. Mitchell; Ed Sunquist; David Wells; Frank Garofalo and Bob Hernandez. Staff members present were: John Schlegel, Director of Planning; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jamsheed Mehta, Transportation Supervisor; and Valerie Robinson, Recording Secretary.

❖ TRANSPORTATION ITEMS

Metropolitan Planning Organization (MPO)

1. Wichita-Sedgwick County MPO - Triennial Certification Review of the Planning Process.

JAMSHEED MEHTA planning staff with MAPD. Item number 1 has to do with the Transportation Planning Process and Certification Review. The Certification Review is done by the US Department of Transportation Federal Highway and Federal Transit combined. They do this for every MPO organization once every 3 years, the last time it was done in the year 2000. They revisited us in 2003 in September for three days in fact they also made a presentation to this board. They meet with staff for about two and a half to three days. They had a public input meeting on one of the evenings when they were here in September and today's agenda item has to do with their presentation or their summary of their findings from the three day long, three year certification. I would like to introduce to you the folks who are here from both USDOT and from KDOT. Some of them will be speaking before you. Byron Low from Federal Highway, Joan Roeseler, from FTA, that is Federal Transit, Bob Bowden from Federal Highway, Jim Tobaben from KDOT, Thomas Dow from KDOT and Margie Norton from KDOT. At the end of the presentation by both the Federal Highway and Federal Transit I would like to come back, because they have identified various subjects, various projects that are in the works, and some are not quite completed. I would then like to give you a quick status report on each of these so that you leave with an understanding of where we are on some of the projects that they have identified in the report.

BYRON LOW Federal Highway. As he mentioned the last time I was here back in September and we did a quick summary over I think one of the MPO meeting of what we had found and this presentation is to give you an update and actually give you an indication of the formal findings that we have from this review and quickly summary. I believe there was a package of information that was sent to you, one was a four page executive summary and then the full report. What I want to do is kind of highlight some of the issues and findings we had from the summary report and if you have other questions you can ask me or when Jamsheed comes back up, because he does have some additional information that will clarify some of the findings or the status of those. As Jamsheed mentioned Federal Highway and FTA must jointly certify at least every three years that the Wichita Metropolitan Area Planning process complies with federal laws. We did our review back in September 17th through the 19th of 2003 and our certification action from that review is that we certify the transportation planning process in the Wichita Sedgwick County Metropolitan Area Planning area for the period of October 1, 2003 to September 30, 2006 subject to corrective actions and recommendations in this review report. What I want to do is quickly go over those corrective actions and five recommendations and one commendation.

The first one that we really want to talk about is the one of the more serious ones, what we consider the most serious consequence and that is the corrective action, we talked about the timely completion of work product and staffing. Some of you may be aware of some of the staffing situation that the city has had with their staff. It has been difficult for them to get some of the work products done. I gave you a list of just some of the planning tasks that need to be initiated or accomplished in the near term. A couple of the critical ones of course is the long-range plan update. The completion finalization of the MPO board representation and the MAPD boundary revisions, documentation of the Congestion Management System and update and documentation of public involvement plans and several other things. I guess what I want to stress is that if you read some of the background information the staff has been short for a number of years and I think it has affected the timely completion of a lot of work products. What we are encouraging is to take a look at the staffing or look at other ways the tasks can be accomplished to get some of these products done in a timely manner. We had asked that this be addressed by the end of this year, with a satisfactory progress. Like I said, Jamsheed will give us an update on where he's at. There have been some activities taken since this review, which was six months ago. There have been some things going on. Another recommendation we had was the number of TAC meetings we feel there have not been sufficient TAC meetings that a lot of these critical tasks should be being addressed through the TAC committee. Another recommendation we had mentioned was the MPO board representation and boundary designation. Again, there has been a lot of work done and I think we are close but there are still some things that need to be finished up before March of 2005. Another recommendation is the TIP project selection process and it is recommended that the project ranking selection processes for projects be developed prior to the next TIP update. Recently Jamsheed they did do a TIP update in February, or November or December, we are asking that this be revisited so that you have more of a regional approach to project selection, procedures and processes rather than maybe just a city wide or a county area selection process. Another recommendation is on the TIP project, one of the things we noticed is that some of the TIP updates was there was a number of projects, and this is more applicable to the Wichita area are not getting done in a timely matter. Some are scheduled, then they fall back as a result there is beginning to be a significant amount of un-obligated federal funds, a lot of carry over. That can be a concern in future. If the money is not used, it may disappear or it may, may be reallocated somewhere else that is another concern that we have. The other main recommendation is two certifications in 2000, one is the update and documentation of the public involvement procedures and the other is documentation of the public input, into the congestion management systems. I am sorry, documentation and public input into the congestion management system. Both of those have, the MPO staff has been working but because of like I mentioned, staffing situations so forth they have not been able to complete. A lot of these recommendations that we have are tied to the staffing

issue and timely completion of work product. So there is a tie between what we have with corrective action and some of the other recommendations.

Finally we did have commendation, some of the air quality effort that the city and the MPO staff have been doing are to be commended. I know that the latest information that I have received is that I don't believe that there is going to be an issue with the Wichita area going in the non attainment. Some of their numbers have or some of the worst numbers have dropped out, there are better numbers that are now coming along. Even though there has not been any threat of air quality non-attainment here it is something that needs to continue to be monitored and the efforts of clean air actions to address those problems. Lets make sure we keep on top of those so we don't get into a non attainment problems, like the Kansas City area, which was in attainment and now it will be going into non attainment. There is a lot more issues to resolve, or that have come up that need to be resolved.

That was just a quick summary and what I would like to do is have Joannie from FTA just add a few comments and any closing remarks.

JOANNIE thank you Byron, good afternoon everybody, it is great to be here in Wichita. I am Joannie Roeseler, with the FTA regional office in Kansas City. I think everybody is familiar with the Federal Highways but Federal Transit is a grant making agency, nationally we have a budget about 7 billion dollars annually where we provide funding for public transit, planning, capital assistance for maintenance for facility and new equipments including those in Wichita Kansas. We wanted to thank you very much both Federal Highway and FTA for the opportunity to present the findings this afternoon and also for the cooperation that the staff showed us during our review process last September. Also in working with the results on the review. One of the things I wanted to emphasize that Byron mentioned was the whole issue of the whole of the review process. We are required by law to conduct the periodic reviews to make sure you are in compliance with the MPAP planning requirements the US DOT Metropolitan Area Planning requirements and as a result of the review there are findings. Findings that fall into the category of corrective actions are very critical because failure to correct the actions with in the time frame could result in holding up DOT funding for Federal Transit and Federal Highways and neither Federal Transit or Federal Highways want to get into that situation but we just want you to know that corrective action are very important and that we look forward to working very closely with the MPO staff to resolve the corrective actions prior to the deadline of the March 2005. Many may be aware that the basis for funding both the Federal Highway and Federal Transit is an authorization from congress. Those authorizations have had different names, ISTEA, Inter Model Transportation Act, Tea 21 the Transportation Efficiency Act of the 21st Century and right now we don't have an actual 6 year Act it is a little continuation act and congress is in the process of going through reauthorization. The status of that reauthorization for our programs is that both the house and senate have passed bills and they are now on Easter recess so when they come back a conference committee will meet to try to work out the details on the differences between the bills and there are huge differences. As far a dollar amount for funding and for program provisions so that will be a really big job and I will be anxious to see how it all gets resolved. At the same time the administration has set specific standards that it would like to see as far as over all funding amounts for the bill. So those authorizations give us a framework within how our programs are operated. One of the I guess hall marks of some previous authorizations were the whole concept of inclusiveness and representation in the planning process that all the jurisdictions are represented at as decisions are made for various projects and programs. The one corrective action the corrective action, the whole issue of expansion of the MPO board is to include the new geographic areas that resulted from the Census that is very consistent as whole underlying theme of the various DOT authorizations. We feel that it is very important to work through that issue. Like Byron I wanted to congratulate you, the Wichita area on the excellent work that you are doing with air quality planning. I have had the opportunity to sit in on some of the conference calls where Wichita has very actively involved in discussion some of the volunteer measures that were taken in this area to keep air quality from getting worse. Hopefully they will approve it. So thank you very much for this opportunity.

MEHTA If you like I can continue with this and you may have questions of Federal Highway and Federal Transit or if you have a burning questions right now that could be done whatever is your pleasure.

Can I proceed? I am going to identify those projects that have been mentioned or cited in the narrative that you have got. The executive summary and then the entire document itself, what I don't want to do right now is touch on things that we have done, because this is not the place to necessarily to talk about all that we have done, and put it behind us. Instead, lets focus on those issues that the USDOT wants us to act on. On the first item which has to do with corrective actions, that is filling of staff vacancies, so that you have a feel for where we have been and how much staffing we have. At this moment we are at 50 % filled at this time. We have had some staff turnover and the greatest impact occurs in the period where we had a hiring freeze in the City of Wichita in the periods of 2002 and part of or most of 2003. This has altered both internal in that period and external hiring which does make a difference on where staff will eventually end up after the hiring freeze is unfrozen. In terms of our work program, we have done a lot, but I mentioned I'm not bringing that up unless it is specifically identified in this particular report right now. I will focus on those where you have corrective actions and then recommendations identified in the Federal Report. If you recall the exercise that you went through a year ago on identifying what the boundaries would be, the expanded boundary because our urbanized area went into two adjacent counties. We went through an ad hoc committee; we brought a project report back to the board. The City of Wichita voted on it, the preferences of how it wanted to deal with the issue of representation and the structure of the MPO board. This group then gave us the staff direction to work with the adjacent counties and the cities and we have done that. We have drafted the boundary; it is a working boundary right now. You have not taken an official formal action to call that your planning boundary but it is pretty close. Things that are left to be done in this one topic is having an MPO-KDOT agreement once that is drafted, presented back to you. You can hold a public hearing on it and then finally you have the MPO boundary revision and representation issues addressed. At the same time what we will also plan on doing is addressing the Technical Advisory Committee and the coordinating committee bylaws; these are those bodies that advise you on the technical level and on the policy level as well and this would be an opportunity time to make revisions to there bylaws just to make sure that there is representation covered in your advisory committees as well. The South Area Transportation Study was first identified in the Long Range Transportation Plan that you approved about four years ago, we held stakeholders meetings which included various cities of Derby, Haysville, Mulvane, City of Wichita, Sedgwick County, Kansas Turnpike and KDOT, based on decisions and meeting that we held at that point and time it was decided or expanded from what was at that time called the South East Area, into the South West Area as well so we now call it the South Area Transportation Study. We have secured funding which we didn't have a few years ago. At that time we were only considering one quadrant now we have about a million dollars of federal years marks identified and pending a draft agreement between KDOT and the MPO we will then launch what's called a request of proposal and have a consultant on board to go ahead

with this study. The magnitude of this study I can tell you is going to be much more larger than what your experience has been, for example with the northwest bypass, it is twice the area. It is at least twice the number of entities or municipalities that are involved and a whole lot of other subdivisions and residential activity in the general area. It is going to be quite a challenge. It is important for us to make sure that we have staff on board when these studies are in full swing.

They also mentioned Long Range Transportation Plan, just to keep in perspective, we have a dead line of five years for the existing plans to run out in March 15, 2005. This is also the topic of the next agenda item where I am going to share with you the schedule or approximate schedule of how we will be doing various activities leading to the 15th of March deadline for the transportation plan update.

The TIP projects selections and criteria, the process and criteria. The transportation division staff maintains the funds, balances and accounts, several federal funded programs. We put that before you in the form of a Transportation Improvement Program. We also use a technical formula, which we have used before and revised over the years and we share with other communities as well to help prioritize street and highway projects as they are submitted. To give you an example, the City of Wichita's entire CIP is also reviewed. We only identified those projects, which would be eligible for federal funding. Then also identify those projects which we do not think are needed now and do not score a high enough point to be considered, there are better projects and there is a lot of work that goes on, I want to say behind the scenes. So ultimately the product you do get is a fiscally constrained document and you don't have to deal with the issue like for example the one you did about three or four years ago where Wichita and Bel Aire were polarized on which project to do. With the exception of that kind of a case we do a lot of this work in the background and work with staff from the various Cities and Counties. This last TIP in fact included for the first time, we did additional meetings and workshops. We invited small cities and other jurisdictions. We did that because it was within a month after the Certification Review in September and from lessons learned we went all the way out, inviting them, working with them, having special one on one meetings with some of the smaller city staffs, as a result the final TIP that you adopted in I believe in December includes for the first time 11 projects from small cities; from 7 or 9 of those jurisdictions, I am not sure how many there were at this point, so what's needed to be done and what is being emphasized by Federal Highway and Federal Transit is have a formal process and a more formal selection criteria, and yes we can do that, a lot of work went into preparing the formula. We were just hesitant in presenting it to you and getting it more formalized because for about two years this body and staff were engaged in identifying what could be the possible new structure of the MPO. If it became a council of governments, if its elected officials, the public involvement process changes and therefore the selection criteria or the process that we are involved in would also change. Since we are getting direction from you that the MPO structure stays pretty much as is with the exception of the additional membership coming on board which is your direction to us, we will bring back that formal process to you for your final consideration.

Congestion Management System, now this is one of the many products of a MPO that is required by law. Congestion Management System was adopted in the 1990 and updated a little bit in 1998. It identifies the data and the entities who will gather this information and analyze it. Our plan was to use more state of the art methods like using satellite GPS, Geographic Positioning Systems so that we can compute and identify where are the latest occurrences of congestion in the field and what kind of rank to assign to certain street sections and highways if in fact it has those kinds of delays, so that you can identify them in the short range planning process. In addition to that technical part, Federal Highway wants us to update the management system before the end of the year which includes what the process would be. That is something that we have not formalized with you as the board and that is the reason why its identified in the Certification Review.

The public involvement policy and plan: every MPO is required to have one. We have one prepared and adopted in conjunction with ISTEA from over ten years ago, but it has never been reviewed again or changed and what is required out of the certification review is that there be an opportunity for the public to also review that. This give us an opportunity to streamline it, lets make it more efficient, there are various new issues, environmental justice kinds of issues that need to be inserted in this particular plan. When we present that to you, run it through various reviews, your public hearing on it and that has to be adopted also by the end of this year.

On ITS, not all these projects listed are necessarily falling behind put there are particular mandates on it in terms of time, but never the less is an important product or work element of the staff work program. To date, here is what has happened, staff has the role of managing and coordinating, both Wichita and Sedgwick County and KDOT joint efforts to get several studies and various implementations projects going. It took us two years to get a memorandum of understanding between these three bodies and I would say for no fault of staff but this is a rather endearing task. It takes quite a lot of work behind the scenes to get things done that way. We secured six million dollars in the first memorandum of understanding. We secured four million dollars from Federal earmark in the year 2003. It is our understanding there is approximately seven million dollars of additional funds, waiting to be secured as soon as the new appropriation bill is signed. So there will be additional funding to go towards implementing of ITS projects. The planning staff and the planning department does not have any implementation projects; those are done by public works emergency management or KDOT, but our role, specifically your role, as the MPO will be to develop the regional architecture. Within a month we will be launching a request proposal for the ITS regional architecture before we do that we would like to bring back as a workshop item just to refresh your memories on what ITS is all about and how does regional architecture and the various projects fit into it so we will be bringing that to you in less than a month then at the same time launch a request for proposals to hire a consultant, in the course of about 6 months we should be able to get ITS architecture in place. Recommendations from 2003 review include everything that had been identified under the caption of projects that may be affected due to the staffing situation, well in addition to that and I have covered the first two over here, the next two the Advancement of TIP Projects and holding regular technical advisory meeting; on the first one on the Advancement of Federal Projects, I want to say this has little to do with MPO or staff but often times the City in this case the City of Wichita because they have 90% of the projects, there projects would slide from one year to the next and don't get let in the year for which it was supposed to. For various reasons sometimes for design changes, because after a public input opportunity maybe there would be significant changes from a four lane to five lane or remove the median or whatever and that causes delays. So what is happening is the projects are going to the next year. The project is not lost it just has to be funded out of another year's project funds. Which is the reason why you see me two or three time in a year coming in with amendments to the transportation improvement program. All we are trying to do is make sure that we do not loose the obligation authority for that particular year with federal funds, we quickly reshuffle the deck and give you projects that may be ready to proceed, so that the funds for projects continue to come for Wichita Sedgwick County.

On the issue of regular TAC meetings, yes we have engaged the technical group so far when we have got certain documents for there reviews or certain projects for their review, when we have a Unified Work Program, a Transportation Improvement Program, and when we do not have these to be presented, there is no action. What is required of us is to hold more of these technical advisory meetings and definitely for this year we will for sure be having quite a few because this is the year in which most of the transportation plan dates occur. Not only for that reason but various other projects, TAC meetings will be held more regularly.

On my last slide, just to tell you the two projects to be identified from the 2000 review has to do with the documentation of the congestion management system and the update to the public involvement policy. I have already talked about that, this is what we will be working on for completion before the end of this year. With that I think Federal highway or myself can take any questions that you might have.

MARNELL It seems to me like I remember the same discussion back in September, when we were talking about how far behind we are and what is the risks not coming into compliance and I believe it was stated that the contract, which would be acceptable under this program could be funded to help bring things up to speed. How come no contractors have been hired? If we had a problem with hiring people through directly through city hall and personnel how come we haven't hired contractors just to bring out request for proposals and hiring contractors from one of the engineering companies or multiple engineering companies.

MEHTA we have had a consultant on board for the largest one which was the 21st street revitalization corridor. That study is already underway. And for some of the others it is in the work program to do those. It's difficult in September when you are setting your unified work program to say that in January you will be able to do it when the year is authorized for that particular project because as we speak right now, we are still the same three staff member that we had in October and there is some progress going on is that we have made offers, but when it comes to identifying which projects should have been let, yes they will be let, we just are tied with so many other things to do that it has perhaps slowed us down in even handling those particular projects.

MARNELL maybe I didn't make myself clear or stated that quite right, why don't we contract for those positions temporary, which would be staff positions which could be assigned to work on multiple projects as opposed to letting a specific engineering project.

SCHLEGEL can I take a stab at that. True to be told hiring someone like a contract employee is just as under the cities processes is just as cumbersome as the process for hiring permanent employees. So we would not gain any time by doing that. The management contract employee over a permit employee, when the work runs out the money runs out then it is easier to let that person go than a permanent employee. What we need, we need additional permanent staff positions. We are going through that process of getting those positions filled; it is very frustrating and a very cumbersome process to do that. There are so many hoops and hurdles and forms, memo and in the bureaucracy moves slowly, but whether we had tried to do that through contract employees or the way we are doing it is trying to hire permanent employees, it would have been the same slow molasses pace and there is not much we can do about that. It is not something we have a lot of control over.

BISHOP to follow up on that, John has the city ever considered working out an agreement with a contracting company, I am just going by the model that is used at Boeing where they have agreements with some companies that provide for instance contract engineers so that the agreement is between the company and the provider of certain kinds of contract engineers and that would, or then you could go through all that process work out all that bureaucrat detail but they would just be provided.

SCHLEGEL then you are leaving it up to that firm to supply the employees. For some of this work that might be a good alternatives, but we also just need people on board here in our office to help get this work moved along.

MARNELL my question was right along what Elizabeth was trying to say. In the past I have been involved with civil engineering companies, when we need a civil engineer, you could go to a Company and hire three civil engineers, you would have a contract with that Company, you would not know who was going to come but you knew that they were going to be qualified civil engineers. They would show up, and work there and there was a certain rate to pay them while they were there. They didn't go through the bureaucratic internal hiring process because they belonged to the contractor. They were contracted for a specific duty and in this case they could run parallel courses. What is going to happen as I understood from the last meeting, we have access to funds, because it is backing up and we are not getting the work done and you can have both of them working so you don't have to worry about overlapping. It seems to me that we would want to move forward on it.

SCHLEGEL like I said for some of this work that is a good idea and we will explore that further, but for other things we just need staff people, we need in house, helping to moving things along, so for some of the work that would not be a good arrangement. We will explore that further. It is a good idea.

GAROFALO Is there a freeze on hiring right now, this year?

SCHLEGEL yes, it still requires that in order to fill a vacant position you have to go through a position review committee and because of the tight budgets, they are pretty stingy in letting positions be filled.

GAROFALO how does the Federal money fit into the positions, if the federal money is paying for this positions?

SCHLEGEL City put the freeze on the hiring of all positions despite the fact that these positions were funded from federal funds. I know even before I got here Dale was the acting director was trying to get those positions unfrozen based on the logic that this is federal money but for whatever reason the excuse was that we need to wait for the new director to show up and when I showed up and took over it was, we will consider it, and it took me about four or five months before I was able to get them to unfreeze those positions.

GAROFALO was there some concerns that these positions, if the federal money had dried up, that the city would have to pay for those positions?

SCHLEGEL that was certainly a concern that we have had all along and we have made that pitch, but it was falling on deaf ears inside city hall. It took me literally till about October to November to get those positions unfrozen and to even start the process.

GAROFALO so now we are in the process of trying to get people, to fill those positions?

SCHLEGEL we are pretty far along now in the process, of the three positions that we were authorized to fill, we are in the position of having made offers on two of those positions and the third we are still doing interviews on.

GAROFALO so it is a good chance that these positions may be filled in the near future?

SCHLEGEL we expect them to be filled fairly quickly, we are pretty far into the process right now.

MITCHELL could I have Mr. Low answer a questions for us? Each of you has made considerable comments about the lack of public involvement in the process and I note from your appendix that the evenings meetings that you held on September 18, I believe it was had 12 attendees, two of which are identified as current or past planning commissioners. What I am wondering is how much benefit did you get from people that would be called the public rather than those that are already involved in the process.

JOANNIE I am not sure if I understood your questions but any or all comments are beneficial, feedback is helpful. Was there a specific distinction that you were looking for?

MITCHELL ten people out of a community of a half a million talking about the Federal funding for highway projects that effect most of the people living at that area, doesn't seem to me like the turnout for that public involvement was enough to be a major issue in whether or not the current impact is enough to show in carrying out the plan. If we don't get anymore input than you have got in that meeting I don't think that is going to be very helpful.

BYRON let me add, I am not criticizing for the lack of public involvement, it is the update of the public involvement, the plan to make an effort to try to increase public participation. This is an issue not just here but everywhere and often times it may be the approach that you are taking to get public involvement, so what we are asking is to take a look at the public involvement process and update it.

JOANNIE part of it is documentation for clarity purposes, we have noticed at times, I am not saying specifically in Wichita but people who are involved, member of the public who are involved in the processes sometimes there is a variances of expectations, there involvement will yield, so the public involvement policy deals with the issues of how public involvement will be addressed and techniques that will be utilized for community outreach. So it is documentation of the process. Does that answer your question?

MITCHELL that helps.

BYRON one other thing, we are talking about the planning process and it is good and bad if you don't have anybody, you are going to have to look at the positive too, just because no body shows up does not mean there is a problem, it could mean they may not understand or they may not have an issue with the planning process. I think we want to make it clear it is more than just not really lack of public involvement but the process that you need to revisit and update and take a look at it again.

JOANNIE our review or the nature of our recommendation was based on a broad review than just that one meeting.

HENTZEN you can answer my question either one, in this state right now the legislature has raided highway funds for their daily operations I'm talking about the states operations, I think they took out a hundred million or something and they were just going to borrow it at first now they are trying to make it permanent; do you see that happening all over the country because it is just so difficult to work out a CIP program, transportation is the thrust of the most of it and then have somebody come along and steal the money. Is it happening elsewhere? Is it happening to the, is the federal program being treated that way?

BYRON if you include earmarks, it does take away the way we can set priorities. I would say it is a bigger issue right now in the states; I can use Missouri as an example. They have lost a lot of revenue. I don't think there's is as well protected, there state funds is as well protected as yours are. You are talking about taking away sales tax revenues. I think they have lost revenues that were generated by gas tax. They have gone beyond that. There are a number of states, California is the same way. They have done some bonding, they have been cutting back on the transportation program, other people are looking at that as a revenue cow, so yes it is not just Kansas. It is all over. One thing I have to say is that Kansas has been lucky in, and that hasn't been worse.

HENTZEN I just want to make the observation that it is difficult to get the citizens have faith in you if you don't do what you say you are going to do. That has happened and that is why only 12 people showed up at the meeting.

JOANNIE as Byron has said it has been a real challenge nationally with the economy that all the states have been hurting a lot for revenue. I think there are a lot of different examples. One of the things happening right now in congress is with the reauthorization process. One of the decisions that congress will have to make is if to include or to continue to what is called firewalls or minimal amounts for highways and transit programs that will be allocated this year, both ISTEA and T21 have firewall provisions and that I think from the Federal prospective has been very helpful in insuring consistent delivery of federal funds. That provisions I think is in the house bill, and may or may not be in the senate bill. But anyways that is something that congress, or conference is going to be making a decision on in the near future. So the legislative process depending on how things like that are written will make a difference on how much continuity there is in the flow of funds... Do you want to here from KDOT on the Kansas issues,

JIM TOBABEN Transportation Planning with KDOT, I will give you just a little bit of background because you are right over the past few years we have lost some money from the transportation program, from the sales tax transfer that was to go from the state general fund to the highway fund. There has been a bill that has passed both the houses both the senate and the house and it pretty well make us hold and protect the Comprehensive Transportation Program. What that does is lessen the amount of sales tax transfer that we will get each year but it will make up that money...through a variety of sources; selling some bonds that are backed

by the state general fund. Hopefully some increase in transportation funding in the new federal program. Possible a slight increase in the gas tax, I am not positive on that one but there is a bill that is supposed to make KDOT hold and protect our program through 2009. The thing we like it is that the money definitely is tied to transportation, where as in the past it has been very tempting with the sales tax transfer, money is tight, here is a larger amount of money, it has just been too tempting to take that money now and to try promise to pay KDOT back later on. But right now I think our Secretary and the governor are very pleased with the bill that has passed.

(turn tape over)

DUNLAP what percentage will be funded will be provided by the bonding? Yours is only one of a bunch of departments that is going to be doing some funding by bonding. At some point we hit the top at which point our bonding ability drops and I would like to know what percentage of the transportation plans are going to be funded by bond money?

TOBAGEN I wish I had that answer for you but I don't today, we can certainly get that for you if you would like.

DUNLAP I was just curious.

TOBAGEN I just don't know.

MARNELL Any further questions? No. Jamsheed update or any further comments on item 1?

MEHTA any closing comments?

MARNELL before we leave item one, what I would like to do as the Chairman is to appoint the Advanced Plans Committee of the MAPC to be the committee of the MPO to help with these review recommendations, to help us move forward and review those public involvement changes and help move that along. We will add that to the agenda so at the same time we have the Advanced Plans meeting for the ... commission we'll have that committee meet, an unnamed committee since it is not obviously Advanced Plans, but just add hock committee to help with that work so the members will have dual roles. So we will be seeing you at 7:30 in the morning on some of these days.

BARFIELD what is the status of the railroad overpass/underpass program?

MEHTA the one that was funded and approved for the central railway corridor, if that is the question?

BARFIELD I guess my question is has it been funded? Since the last time I had observed it had not been funded, and the question is weather or not funds were available?

MEHTA the Central Rail Corridor which is approximately from Downtown Douglas north to nearly 17th that is in the Capital Improvement Program of the City of Wichita, and that is funded. There are some additional 7 million dollars that have yet to be authorized in the new federal bill, which will add to the total rail corridor projects. There was another one for the south near Pawnee, one of the Pawnee projects was on hold for lack of funding but the central rail corridor is a go as far as we can tell this year.

BARFIELD that has been totally funded?

MEHTA that is our understanding in the Capital Improvement Program.

BISHOP when you say there is still 7 million still to be found do you mean the re-authorization within congress in Washington not the state?

MEHTA correct it is federal funds. And it is not necessary for this project or if it is for this particular project, then that 7 million dollars saved locally to be put on the other projects, which is un-funded. The highest priority being the central rail corridor is funded, as we know it right now.

2. Transportation Plan Update Schedule.

JAMSHEED MEHTA Planning staff, just to take you to the end first, the end is the 15th of March next year 2005 and it takes quite a few years of projects or modeling and various other things that we do before we get to the point where you as the MPO approve the long range transportation plan. In the years 2002 and 2003 what we have done is expanded our modeling exercises. We have from four hundred-traffic zone models to over 8 hundred-traffic zones in the model, not that we have doubled in size but we have made our modeling sizes more sophisticated, more finer. This is technical detail that you won't concern yourself with as much but this is what we do a lot of times. It required coordination with the small cities, KDOT in developing the new model, we are near that point that we can say we are pretty much done with modeling calibration. Which means that the traffic counts that are actually experienced on these streets, we are very close to that in our simulation on the model. We are within a 3% range, which is considered as acceptable and good. In the periods April, May, what we are doing is identifying the deficiencies in the systems and what has happened in the last plan update was based on the year of 1997 and the new plan update which is based on the 2002 data, we will present to you and the technical advisory committee what our findings are on where are other deficiencies. What projects have we done, and what projects are still needed in the near term. Then we will bring to you in the period May thru June, if you recall in the 2030 plan, you've got goals and objectives and strategies. Pertaining to transportation on it's own there is nearly 40 or 45 strategies. Our intent is to bring to you a report for each of those. Have we addressed these, have we meet the strategies. Have we done something that is worthy of now dropping it, do we need to add more strategies. So that discussion occurs in May or in June, it will be with you, the technical advisory committee and ultimately we take this to an open public meeting or a workshop where we solicit input from small cities, the general public, various stake holders, we have the names and addresses in our data bases. We take the input and in the periods of May through June, do various exercises, some of it is modeling, some of it is policy

related and we can come back to you for policy related work but we do our own modeling in house to see if idea is good enough, does it make sense, there might be some wild ideas also that we need to identify for you and rank these so that at a certain point in time, probably in October we will present to you all our findings, tell you which of the projects that will make sense in solving problems for the year 2030. Now bare in mind this is not a major new transportation plan, this is an update to the previous one. The horizon year 2030 stays the same, what we are doing is taking refined information that we got since the most recent census, we have got 5 years worth of additional transportation and travel patterns, data to put in so we want to see what has changed but not necessarily drastically do a whole new transportation plan in that case. So in November when we present to you our findings and we start going through a process called project selections, at the same time we will identify for you what will be the approximate costs associated with these projects. So that you have a wish list of project and then you will have those, which you can actually do, given the flow of funds that we can make reasonable forecast will exist to or up to the year 2030. We will revise those transportation strategies I told you about earlier that we will do in May, we will revise them and that will be most of the work that you will be doing as the MPO board. Identifying what new strategies that need to be identified and included in the update. At that time we have workshops, you identify meetings, public hearings and then in the periods January through March you hold the public hearings, adopt plan. Prior to the final adoption action I would also ask that we do briefing of the governing bodies of Wichita and Sedgwick County. Here is the reason why you need to understand the unique relationship that we have here. You as the MPO board are the ones that finally approve the transportation plan, that is what's required of federal statutes. The MPO board prepares the plan. But as an element of the comprehensive plan, well the Comprehensive Plan is approved by the governing body, Wichita and Sedgwick County and you basically provide a recommendation to them. It is a little bit reversed now in transportation, which is why I am suggesting briefings of Wichita and Sedgwick County, get their acknowledgement that we are heading in the right directions for the transportation section and then you hold your final public hearing to adopt the transportation plan. So yes it is an ambitious project but the feds are here on our backs and we will have to do it.

BISHOP, in the process especially in the public hearing and the public input part, in addition to the small cities I would like to suggest that you consider something that would include rural residents. I know that in particular those that are involved in agriculture. I know that Sedgwick County is a large metropolitan area and a lot of the issues had to do with growth and the needs of Wichita as a city and the needs of the small cities, but I do believe that there are some particular issues that the farmers might have to bring to there own regarding transportation. We were told recently that there is a major concern about the inability to move their products. While that may be more of a railroad issue than highway, it is still transportation and I think there is input that people in the agricultural areas would like to have

MEHTA, we'll get the word out that we are hosting public input opportunities, we will try to cover everybody and make it as diverse as possible so that there will be announcements in the papers, the officials papers and we do have a list of stakeholders and there are organizations on the mailing lists we try to make sure that they are there. Even if there is no project necessarily, you can adopt and included in the transportation plan, and you recognize those needs, that is where you goals objective and therefore strategies could identify the need for additional work to be done in the next 5 years or the next 3 years on select topics. On March 15, 2005 we don't have to have solved all those issues, but you need to recognize and have a work plan to include their concerns in that plan.

HENTZEN, could I just say thanks to the federal people and the state for helping us to understand what our obligations and responsibilities are. Thanks a lot.

BYRON, I just wanted to add, I appreciate your time for us to come and just talk about some of these issues. We are here to help you, we appreciate Johns, and Jamsheed time, KDOT and so forth, but there are certain requirements that have to be complied with that is one of our jobs, but we do appreciate your level of interest and time. Thank you

❖ **PLANNING COMMISSION ITEMS**

3. Approval of March 11, 2004 and March 25, 2004 meeting minutes.

The March 25 minutes were not included in packets. Revise the item to be the March 11th minutes only.

MOTION: That the minutes for March 11, 2004 be approved.

MITCHELL moved, **MARNELL** seconded the motion, and it carried (9-0) **MITCHELL** and **MARNELL** abstains.

❖ **SUBDIVISION ITEMS**

4. Consideration of Subdivision Committee Recommendations

4-1. SUB2004-31 – One-Step Final Plat – PRAIRIE MEADOW ESTATES ADDITION, located on the south side of 79th Street South and the west side of 135th Street West.

NOTE: This is a replat of Lot 1, Block 1 in the North Wood Estates Addition in addition to unplatted property to the west. This site is located in the County in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Clearwater Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and

water wells. A memorandum shall be obtained specifying approval. Due to drainage constraints for Lot 22, Block 2, **County Code Enforcement** should comment on the buildable area. **County Code Enforcement has approved a site plan for this lot.**

- B. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, **County Code Enforcement** recommends connection.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan is needed. The drainage easements currently do not follow the natural drainage pattern. Realignment of easements is recommended or a guarantee for realignment of drainage channels. Additional easements or increase in easement widths may be required.**
- E. Per Sedgwick County Fire Department, access drives to any structures in access of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface needs to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed.)
- F. In accordance with Access Management Regulations for County plats, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along Prairie Meadow Circle from 135th St. West and from 79th St South.
- G. **Due to drainage constraints, County Engineering has recommended one opening along the south property line of Lot 22, Block 2.**
- H. **County Engineering** recommends a contingent street dedication between Lots 15 & 16.
- I. The applicant shall guarantee the installation of the proposed streets including a 36-ft rock suburban street standard for the cul-de-sac streets.
- J. The plat's text shall correctly reference the utility and drainage easements.
- K. **GIS** needs to comment on the plat's street names. **New street names are needed.**
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.

- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DUNLAP** seconded the motion, and it carried (11-0).

4-2. SUB2004-27 – One-Step Final Plat –MONIQUE’S ADDITION, located south of Kellogg, west of 143rd Street East.

NOTE: This is a replat of Lot 1, Block 8 in the Springdale Lakes Addition in addition to unplatted property to the south. The south portion of the property is located in the County adjoining Wichita’s city limits and annexation is required.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the south portion of the property will need to be completed. Upon annexation, the entire property will be zoned SF-5, Single-Family Residential.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. Municipal services are available to serve the site. **City Engineering** needs to comment on the need for guarantees or easements. **A petition is needed to participate in the paving of Clear Creek.**
- D. **City Engineering** needs to comment on the status of the applicant’s drainage plan. **The drainage plan is approved.**
- E. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves which are not being replatted by this Addition, a restrictive covenant shall be submitted which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- F. The Applicant has platted a 15-ft building setback along Gilbert which represents an adjustment of the Zoning Code standard of a 25 feet front setback for the SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- G. Clear Creek Drive needs to be relabeled as Clear Creek as platted in the Clear Creek Addition.
- H. According to **Debt Management**, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. The plat’s text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant’s engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary’s signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant’s responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- P. Perimeter closure computations shall be submitted with the final plat tracing.

- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, DUNLAP seconded the motion, and it carried (11-0).

4-3. SUB2004-32 – One-Step Final Plat – BANUELOS ADDITION, located north of 29th Street North, west of Broadway.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. City water is available to serve the site. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **City Engineering** has requested petitions for the paving of Fairview and a No Protest Agreement for the future paving of 30th St. North.
- E. The plat's text shall include reference to "lots and a block" in the owner's certificate.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The building setback platted along Fairview needs to be denoted as 25 feet.
- H. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- I. **The Subdivision Committee has approved a contingent dedication of street right-of-way for Waco which shall be denoted on the face of the plat and referenced in the plat's text. The plat's text shall also note the dedication of the streets to and for the use of the public.**
- J. The applicant is advised that in regard to the portion of the building within the building setback; that while such areas of the existing structure may be maintained, no enlargement of the building in such area will be allowed and if removed, all subsequent rebuilding shall observe building setbacks.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DUNLAP** seconded the motion, and it carried (11-0).

4-4. SUB2004-34 – One-Step Final Plat – THE WATERFRONT THIRD ADDITION, located north of 13th Street, east side of Webb Road.

NOTE: This is a replat of a portion of the Waterfront Addition. The lot boundaries have been revised. Access controls correspond to the previous plat.

STAFF COMMENTS:

- A. Petitions have been provided with the Waterfront Addition for sewer, water, paving and drainage improvements. City Engineering needs to comment on the need for new guarantees. **No new guarantees are needed.**
- B. The applicant shall contact Debt Management regarding the submission of a respread agreement for special assessments due to the lot reconfiguration.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- F. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's

responsibility to contact all appropriate agencies to determine any such requirements.

- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DUNLAP** seconded the motion, and it carried (11-0).

4-5. SUB2004-35 – One-Step Final Plat – SHADY RIDGE ADDITION, located south of Central, east of Ridge Road.

NOTE: This is a replat of a portion of the Woodland Heights 2nd Addition and is subject to the Farmington Square Community Unit Plan (DP-59). The applicant is proposing duplexes.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **Revisions are needed. Minimum pads need to be platted on lots adjacent to the drainage dedication.**
- D. The Applicant shall guarantee the paving of the proposed streets.
- E. A CUP adjustment is needed so that the perimeter of the proposed residential block matches the perimeters of the CUP parcel boundaries.
- F. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- G. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. **GIS** needs to comment on the plat's street names. **The street names shall all be denoted as "Shade Ct".**
- J. The drainage dedication along the northwesterly line of the subdivision needs to be labeled.
- K. The plat's text shall include that the "subdivision is in the Northwest Quarter of Section 22, Township 27 South, Range 1 West".
- L. In the plat's text "Film 23232" needs to be corrected.
- M. In the legal description the word "Block 1" needs to be removed (Woodland Heights 2nd Addition was only platted into Lots).
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County

Engineer, and unobstructed to allow for the conveyance of stormwater.

- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy has requested additional easements.
- X. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **DUNLAP** seconded the motion, and it carried (11-0).

4-6. SUB2004-36 – One-Step Final Plat – FONTANA ADDITION, located on the north side of 29th Street North and the east side of 119th Street West.

NOTE: This site is located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering requests a drainage plan.
- E. This site is located over the Equus Beds aquifer. The Equus Beds Management District has advised that the construction of ponds within the Reserves needs to be approved by the Division of Water Resources.
- F. The street right-of-way on 119th St. West needs to be 65 feet.
- G. County Engineering has requested a guarantee for paving of right and left turn lanes on 119th St. at Fontana. Traffic Engineering has requested petitions for left and right turn lanes along 29th North and 6% of the cost of a traffic signal.
The Subdivision Committee approved this plat without the traffic signal. It needs to be determined if 119th Street is annexed into Maize.
- H. A 58-ft right-of-way width is permitted for Fontana subject to "No Parking" on both sides of the street. The face of the plat shall

be referenced accordingly.

- I. **Traffic Engineering** has requested contingent traffic improvements to Fontana (e.g. traffic calming devices). **The Subdivision Committee approved this plat without this condition.**
- J. **Traffic Engineering** has requested a street stub to the east for in order to provide for connection with potential subdivision of the adjacent property. **The Subdivision Committee approved this plat without this condition.**
- K. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets and sidewalks along both sides of Fontana which functions as a collector. **The Subdivision Committee approved this plat with sidewalks only on one side of Fontana.**
- L. The plat's text shall include reference to "lots, blocks, streets and reserves" in the owner's certificate.
- M. The parking areas adjoining Reserves K and L need be included as "parking easements" within the Reserves. The easements need to be at least 20-feet deep and no wider than 50 feet. The parking easements shall be referenced in the plat's text specifying that the easements are granted for residential parking only and that no obstructions shall be constructed or placed within the easements.
- N. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- O. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- P. If any of the intended recreational uses for the reserves includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- Q. **City Fire Department** needs to comment on the street length of Fontana Ct serving Lots 19 to 40, Block 1. The Subdivision Regulations limit urban cul-de-sacs to 800 feet in length unless an emergency access easement is proposed. **The street length is approved. A modification on street length has been approved by the Subdivision Committee.**
- R. In accordance with the **City Fire Department** access standards, a 20-ft roadway for ingress and 24-ft roadway for egress is needed at the Sonoma entrance.
- S. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- T. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot or 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- U. **GIS** needs to comment on the plat's street names. **New street names are needed as denoted on the Engineer's copy of the plat.**
- V. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- W. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- X. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Y. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Z. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- AA. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices

must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- BB. Perimeter closure computations shall be submitted with the final plat tracing.
- CC. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- DD. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy, Aquila and SBC have requested additional easements. Sedgwick County Rural Electric Cooperative will be requesting additional easements which will be determined prior to the MAPC meeting.
- EE. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

NEIL STRAHL, Planning staff. Presented the staff report.

DUNLAP Is that plat recommended for approval without the traffic signal?

STRAHL That is correct.

DUNLAP I don't mean for this to be funny, but which city is going to annex this?

STRAHL Wichita.

DUNLAP Not Maize?

STRAHL There has been a question as to the ownership of the right-of-way for 119th St. West. We had heard that Maize owned the street, but that has to be resolved prior to proceeding with the plat.

MITCHELL It should probably fall to the Subdivision Committee to discuss the issue of item G, but that is the reason I asked that this item be pulled.

JOHNSON The 6% of the traffic signal was a last minute issue. If this is a new policy, then it should be addressed before it is a plat requirement of this magnitude. Also, we still do not know who owns the street. At Subdivision, there was also discussion about requiring a turn lane if the County does not own the road.

STRAHL I have just been informed that the City of Maize has just taken over the road.

JOHNSON So do you strike all of G?

STRAHL We need to retain the 29th St. North improvements, as requested by City Engineering.

DUNLAP I am generally in favor of this kind of development, but I really feel put in a bad position because we have not been presented a package that shows us who is going to own what. I am very uncomfortable with voting to approve this subdivision until I know if Maize owns the street or if Wichita is going to annex the property. Who is going to provide the services? What are we going to do about the traffic light? I do not feel comfortable with this at all, and I am wondering if there is another method that we can use to prevent this kind of confusion from getting to us.

STRAHL The traffic signal issue has been resolved as Traffic Engineering has decided not to pursue a petition for that signal.

DUNLAP After the 267 homes are built and people keep coming out on the street, then we are going to keep going through that again. That is almost predetermined. I do not feel like we have a good solid package here. Maybe it is the developer's problem; maybe it is a problem between the City of Wichita and the City of Maize. I do not think it is staff's problem, but I am not comfortable.

MITCHELL I would like to address Traffic Engineering's recommendation of 6% of the cost of the traffic signal be assessed to a totally residential subdivision without any prior policy, action, or rationalization. I do not think it is the place of the Traffic Engineer to make these policy decisions. If we are going to have a percentage of a cost of public improvements, such as traffic signals assessed to new developments much like an impact fee, then I think we need to take a different route. I would not recommend or want to see this kind of 5%, 18% or some kind of an ad hoc recommendation from the Traffic Engineer each time a subdivision appears.

SCHLEGEL Would the board be interested in having a discussion with the City's Traffic Engineer about a policy? I have seen something in writing that the Traffic Engineer has developed. He ran it through the Development Coordinating Committee. Would you be interested in having him come and present that to you as a body?

MITCHELL If he is going to make recommendations to the Subdivision Committee and then on to the Planning Commission, the answer is yes.

MARNELL I agree completely with Commissioner Mitchell. We had the same issue come up on south Greenwich, and it appeared to be just kind of ad hoc. We got it down to questioning how many acres went into it or what the definition was, and it was pretty vague. I think our recommendation at that time was that they develop a sound policy for doing that.

BISHOP I know that there is a proposed policy floating around, and I think we ought to have the opportunity to look at it. It is problematic when we are given what seems to be an ad hoc amount; however, I think it is a no-brainer that adding 270 homes in that particular intersection is going to cause the need to have traffic signalization. I do not think that should be something that all the citizens in Wichita should have as additional tax money. You can call it an excise tax, you can call it an impact fee, call it whatever you want to call it, but I think new development should "pony up" the amount to pay for that.

SCHLEGEL Can we go back to Mr. Dunlap's concerns? My understanding was that you were concerned about the status of 119th St., and I thought we had just found out that it had been annexed by the City of Maize.

STRAHL Correct.

SCHLEGEL The County Engineer's request is no longer relevant for the right and left turn lanes onto 119th Street?

STRAHL They would not be able to process that petition. That is correct.

SCHLEGEL Who owns 29th St. North?

STRAHL That is a City Street.

SCHLEGEL The City Traffic Engineer's requested those turn lanes, so that would remain part of the recommendation.

MARNELL On item G, only the 119th St. comes out.

SCHLEGEL The traffic signal?

MARNELL All of G comes out.

SCHLEGEL Right and left turn lanes?

MARNELL Just strike the six percent.

BISHOP Since we seem to have determined that Maize is responsible for 119th St., is the City of Maize wanting some input into this issue? Were they provided notice of the plat?

STRAHL I do not believe so.

MILLER They have no jurisdiction. The best we would do is provide them a courtesy copy. We did not even know they annexed 119th Street, because they do not provide the information to us that they have annexed in this area. That is why we did not know until today.

BISHOP I am just wondering if they might not be afforded the opportunity to say if they want a median, a light, right turn lane or whatever in that area.

MCKAY When we were talking about the stop light, are the owners of that corner the same people who own the subdivision or is it different owners?

STRAHL Different ownership.

MCKAY Is the intention of that to be a commercial corner?

MARNELL Any further questions for staff?

BARFIELD This idea of assessing a certain portion of these traffic signals is not new. Are we suggesting here that the developer has no responsibility? Is that what I am hearing?

MARNELL My understanding is that it has not been assessed to residential developments in the past. So it is not a change in policy.

BARFIELD I specifically remember a time when I argued this point.

MARNELL Those were commercial applications, I believe.

ROB HARTMAN, PEC I am here on behalf of the applicant. The commercial corner is an exception. It is still zoned county residential, but the plan is for a commercial zoning request to come in on that corner. In the past, commercial corners have been assessed for traffic signals. I do not think any neighborhoods, unless they have requested them, have been assessed for traffic signals at major arterial intersections. If you look at the lay of this plat, the majority of the traffic of this plat will come to Wichita. It would probably bypass the corner all together when you get right down to it.

MCKAY Do you know what the traffic study determined?

HARTMAN I do not; we have talked to Scott Logan. I talked to him about this and wondered where he was coming up with his 6%. It is just something he felt was a good idea, but there was no substantiated number that I know of or any studies that were done.

MCKAY Do the right and left turn signals, traffic lanes or traffic timing devices substantiate this request?

DUNLAP Are you in agreement with the rest of the staff report?

HARTMAN Yes.

BISHOP The Traffic Engineer should give us the numbers on why this percent was requested, which was what he did at the Subdivision meeting?

PAUL GUNZELMAN, Traffic Engineering. This development has 276 lots. If we applied the trip generation, that is about 2,700 vehicles or trips that this would generate. Based on traffic signal warrants, about 10,000 vehicles per day going through an intersection would warrant a traffic signal. If we applied that rule to this intersection, then this residential development would be a quarter of that. When we have previously asked for a percentage of a signal from a commercial development, I believe it would be 12.5% per corner and the City of Wichita would pick up the other 50%. We thought if we charge the residential property the full 12.5% of this, then that would leave commercial development out. So we just split it in half and that is how we came up with the 6%.

BARFIELD Is this a precedent or have you in the past assessed these same fees to other residential developments.

GUNZELMAN We have not done that in the past.

MCKAY I still have not gotten my answer. You are saying every one of those houses are going to come out to the west, come down to 119th St. to 29th and go out that way. There is definite access to another ¾ of a mile to the east or ½ mile further to the east. I would say to you that the majority of the people coming are going to come from that direction and not go all the way to 119th St.

GUNZELMAN That is probably a true statement. They will not all go through that intersection.

MCKAY If you cut it in ½ or 1/3 or whatever, it might be it still does not justify the 10,000 you are talking about.

GUNZELMAN If we cut it in half, then we would use the volume of 10,000 vehicles per day. This could generate 2,500, so we are only asking for six percent of the cost. 2,500 vehicles is ¼ of the 10,000.

MCKAY Under the assumption they are all going that way.

GUNZELMAN Under the assumption that they are all going that way which would be 25 percent of the signal cost. However, we have cut that back to 12.5 percent, then 6 percent.

MCKAY Do you think City staff will close that entrance coming off of 29th Street.? They all have to go in that direction to approve it. I do not think so. Your calculation presumes that they are all coming in from that intersection, and I bet a 1/3 of them do not come from that intersection. Maybe 1/3 of that might come for convenience, but the rest is going to come the other way.

BISHOP But even 1/3 is 6 percent.

MARNELL No, you are still way short of 10,000.

GAROFALO I only have one question. Do we need to have a meeting with the Traffic Engineer?

SCHLEGEL I will invite him to come and present whatever draft policy they have. If he so inclines, then we will put it on a future agenda. We cannot command him to come.

GAROFALO We can certainly urge him to come.

SCHLEGEL Okay, we will urge him to come.

MOTION: To approve subject to the changes made in staff comments.

MARNELL moved, **MITCHELL** seconded the motion, and it carried (10-1). **BISHOP** opposed.

4-7. SUB2004-37 – One-Step Final Plat – SAVANNA AT CASTLE ROCK RANCH TENTH ADDITION, located west of 143rd Street East and north of 13th Street North.

NOTE: This is a replat of a portion of Savanna at Castle Rock Ranch 6th Addition in addition to unplatted property to the west. This property is located in the County within three miles of the City of Wichita. It is in an area designated as "2010 Urban Service Area" by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. An outside-the-city water agreement with the City of Wichita shall be provided.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.

- C. **County Engineering** needs to comment on the status of the applicant's drainage concept. **A drainage plan is needed.**
- D. If any drainage will be directed onto the adjacent railroad right-of-way, a letter shall be provided from that railroad indicating their agreement to accept such drainage.
- D. The Applicant shall guarantee the paving of the proposed streets.
- E. The plat's text shall include reference to "lots, blocks, streets and reserves" in the owner's certificate.
- F. **County Engineering** recommends the extension of either Castlewood or Summerfield to the west line of plat in order to provide for connection with potential subdivision of the adjacent property. **The Subdivision Commission approved a contingent street dedication for this connection.**
- G. Per Sedgwick County Fire Department, access drives to any structures in access of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface needs to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed.)
- H. If any of the intended recreational uses for the reserves includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- L. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- M. The applicant is reminded that this site is located within three miles of the City Limits of Wichita and will be heard by City Council. Therefore, the City Council signature block needs to be included on the final plat.
- N. The Applicant is advised that if platted, the building setbacks may be reduced to 20 feet.
- O. **GIS** needs to comment on the plat's street names. **GIS has requested "Circle" be denoted as "Cir". In the event either street is extended, "Cir" should be deleted.**
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in

Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff Presented staff report.

BARFIELD Is that railroad abandoned?

STRAHL I do not know that.

SCHLEGEL It is in the process of being abandoned. The railroad has applied, seeking to abandon, and the City now is pursuing a railbanking proposal for that corridor.

ROB HARTMAN, with PEC. This is part of the overall Savannah development that included two quarter sections of the east side of 143rd Street, and the remainder of this land is actually the last 16 acres of this entire development that was started back in 1988. In 1994, there was a residential plat that originally had 57 single-family lots, and had a street that was platted from 43rd Street over to the west property line. At that time, the area to the east of this was undeveloped, as well as all of this area west of this line over to 127th Street. This is the Rocky Creek development. It has been platted as a through street that comes out over to 127th St., and it also has a street connection up here on the northwest corner that ties into this 80 acres that abuts our 16 acre development that we are proposing over here. In 1996, the developer prepared a preliminary plat that included this entire area and four patio homes. There were 67 single-family patio homes in here and the east half of this, or 20 lots, were developed. Since that time, only about half of those lots have been sold, 9 out of the 20. Two years ago the developer ended up selling this to a builder just to kind of get out from under it. He now has his remaining 16 acres, and we have platted it. This is not the plat, but we have 15 lots that are approximately ¾ of an acre in size. These 15 lots are going to go anywhere for \$40,000 on up. The developer right now has 13 of these lots reserved based on the plan that had two cul-de-sacs. Our point of contention is with the contingent street dedication as a safety issue. The Fire Department did not have a problem with the two cul-de-sacs coming into here. We feel that the only issue is that we had this street dedicated over to the west property line and now we do not want it. When this was first dedicated, this was all undeveloped; no one knew what was going to go on here. Now there is an 80-acre horse ranch here with house. This is probably a \$500,000 house, and this 80 acres has two points of access on 13th Street. There are two driveways, and there is some drainage coming through the street right-of-way on the west property line. There is also some drainage that comes across the railroad tracks in this area, cuts across this corner and come down to here. This is a pond here that goes with this house. It is our contention that this is not a safety issue or a land locked issue for this property. This property has the points of access, and we feel this is going to be detrimental to the sale of these lots. We have people signed up to buy these lots, and they are thinking they are getting ¾-acre lots with trees and ponds, and it is going to be a quiet neighborhood without any through traffic. Our point is that it is not necessary for the fire vehicles or the safety vehicles. If they are asking for contingent street right-of-way, then maybe we need it or maybe we will not. Our feeling is that it is going to be detrimental to the sale of these lots.

BOB KAPLAN When there is a rational reason for it, we do contingent dedications. In this case, Mr. Stevenson marketed these lots. I brought my aerial which maybe gives a little better view of it. He marketed these lots on the fact that they do have large lots. They do have a large degree of privacy, and there are large lots. This is not to be a gateway to a potential 80-acre subdivision. It is his home, and his point of operation. We do not know if it will develop or not. If it does develop, he has access off of 13th St. This access is already in place and it was never intended to be a gateway to a development. It is just not necessary to require a contingent dedication in these circumstances. It destroys the marketability, and we tried this as a conventional subdivision and it did not work. So we went to this 15-lot concept, and it has worked. I do not know how adamant Mr. Weber is about this because this is not a necessary contingency. There is not good reason to impair Mr. Stevenson's ability to develop for something that may never happen. The second thing about that contingent dedication is I do not know if this is developed, will anybody attempt to cross that walkway. It is going to take a bridge. There is a waterway; I do not know if it is a drainage way or floodway. I do not know the extent or breadth of it, but you are going to have to bridge it. It is not going to be a practical access for whomever this developer may be when he has got a point here and he has two points on 13th Street. What is the point? What is the necessity for it? If it never happens, then why impair Mr. Stevenson's development just on the idea that maybe, someday somebody might want to use it. Under these circumstances, it is a total inappropriate request.

BARFIELD I would like to hear from the County Engineer.

JIM WEBER, Sedgwick County Public Works. Do you have a specific question?

BARFIELD Mr. Kaplan is saying that there is no good reason for this request. I am sure you will disagree with him, but would you state your reasons for making this request?

WEBER I will reiterate the reasons that Neil has already given, and try to clarify a couple of things. First, it was platted in 1994 as an outright street dedication. I do not know why they are marketing as if there is not one, but it already exists. Secondly, there is a little drainage through there. This box is about a 4 x 4 culvert, not too big of a deal. This is significant drainage coming down

through here, and one of the things we are interested in is to eliminate as many bridge crossings as possible because of the expense of doing them and maintaining them over time. This railroad right-of-way is under abandonment proceedings, and there is a group that is trying to keep it alive between here and El Dorado. If that does not happen, then we anticipate the rails-to-trails process will kick in. If it is a railroad or a trail, we seriously doubt anybody wants to create any new crossing in that railroad right-of-way to connect to the north. There is access here, but again you have to cross this drainage system. It is like two different parcels. We recommended an outright dedication of a street off of either one of the cul-de-sacs. It was the Subdivision Committee that proposed taking a contingent dedication. We have agreed that this would be an acceptable way to handle this because it does address some of the concerns. What if Mr. McCoy never splits this up? The contingent dedication is a pretty benign deal. It only kicks in if something really happens in here. We think it is a pretty good compromise. I have not come here to admittedly press for one or the other; we are going to go with whatever you decide. I guess my last comment is this 80-acre parcel in 1988, just like this 80-acre parcel was one home. A large and expensive home with large expensive horse barns, and in 2004 it is now almost fully developed. I point that out because we always hear how this guy is not going to do anything, nobody is going to do anything. Mr. Stevenson's father did do something and now we have 160 acres over here that is almost fully developed, and this one is just about done. I will stand for any questions you might have.

KAPLAN With the connection that was platted, an entirely different concept and entirely different conventional subdivision, it did not market, and it was not platted as it was platted today. That is why we do not want that connection.

MOTION: To approve, subject to staff comments.

BARFIELD moved, **BISHOP** seconded the motion, and it carried (11-0).

4-8. SUB2004-28 – One-Step Final Plat – VOEGELI ADDITION, located south of Central, on the west side of Maize Road.

NOTE: This is an unplatted site located within the City. Lot 1, Block A has been approved for a zone change (ZON 2003-65) from SF-5, Single-Family Residential to GC, General Commercial subject to platting. The site is located within the 100-year floodplain.

STAFF COMMENTS:

- A. The final plat tracing shall be submitted with a revised name as an Addition located within Wichita exists with the name "Voegeli Addition".
- B. Municipal services are available to serve the site.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. The plat proposes one access opening along Maize Road. The final plat tracing shall reference the dedication of access controls in the plat's text. **A restrictive covenant shall be submitted that permits future cross-lot access with the abutting property owners to the north and south along Maize Road if and when the subject lot or the adjoining lots are redeveloped.**
- F. "A lot and a block" shall be referenced in the plat's text.
- G. The plat's text indicates that reserves contain utilities as confined to easements. These easements shall be shown within the Reserve.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. The Applicant is advised that if platted, the building setback may be reduced to 20 feet.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The vicinity map needs corrected to replace Kellogg with Maple.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **SBC has requested additional easements.**
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov) . This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff Presented staff report.

TERRY SMYTHE, Baughman Co. I will be really brief about this one. I presented a zoning request about a month ago. At that meeting, I did not want the cross lot access agreement required during the zoning process because we had not had the proper information to determine how far their building was for future setback and the street right-of-way. I have always been opposed in trying to determine street project requirements during the zoning process because it should be an instrument of platting. When we have surveyors out there, we know where building locations, drives and everything else is. So I opposed it back then for that simple reason. The cross lot easement was removed as a requirement for the zoning case that was passed by the Planning Commission. I indicated during the zoning case that we could discuss the plat at the proper time, now is the proper time. I wanted to clarify to make sure everybody understands your original motion was not to have that in there.

MARNELL As a condition of zoning?

SMYTHE Correct. It should be or if it is, it could be a condition of platting not zoning.

MARNELL Which is where we are.

SMYTHE It is very difficult to predict where to agree or disagree on all the requirements, if I do not have all the details in place that we get during the platting process.

MARNELL I guess you have left me confused. Are you apposing it now or have you changed your mind?

SMYTHE After looking at where the location is, the owner of this property would be okay with the cross lot agreement.

MCKAY I thought it belonged to the City of Wichita.

SMITH Not according to the deed that we pulled. That was the legal description that was given to us when we zoned the property, provided through Security Abstract.

MITCHELL I asked that this be pulled. It was my feeling that at the time of zoning, with the structures that are on this site, it is almost impossible to see how people could drive from one of those properties to the other without major changes in grade or removal of barriers. I am going to move again that the cross lot easement not be required and that item G be deleted, rather item E be deleted from the staff comments.

BISHOP I would like an explanation from staff as to why it is being requested?

GUNZELMAN City Traffic Engineering. I believe the request is if one of lots to the north or south does redevelop in the future, then we can review the access points again at that time. We may be able to reduce the number of access points on Maize Road.

MARNELL Mitch, you said it is not practical at this property. Are you generally opposed to cross lot circulations? Is this a specific parcel?

MITCHELL Cross lot circulation is a great idea, but not at this particular location.

MCKAY Between that lake and that building is the Cowskin Creek. So you can see how much buildable area that lot has if you take the lake out, the Cowskin out and what a cross lot easement would do to the piece of ground. That is the only thing I am trying to point out.

MARNELL A lot of time a cross lot circulation on parking lots does not actually remove parking lot spaces because it connects to driveways or maybe a very small number of spaces, but it sounds like a reasonable change. Any further discussion. It has been moved and seconded.

MOTION: To move that the cross lot easement not be required and that item E be deleted from the staff comments.

MITCHELL moved, DUNLAP seconded the motion, and it carried (10-1), BISHOP opposed.

4-9. **SUB2004-29 – One-Step Final Plat – AUBURN HILLS COMMERCIAL THIRD ADDITION, located east of 135th Street West, on the south side of Maple Street.**

NOTE: This is an unplatted site located within the City. The site has been approved for a zone change (ZON 2003-59) from SF-5, Single-Family Residential to NR, Neighborhood Retail. A Protective Overlay (P-O #130) was also approved for this site addressing setbacks, signage, sidewalks, access, lighting, screening, landscaping, permitted uses and architectural design.

STAFF COMMENTS:

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The plat proposes one access opening along the west property line. **The access controls are approved. A joint access agreement with the property to the west is needed. An off-site dedication of complete access control is needed from the property to the west**
- E. **Traffic Engineering** has requested a petition for traffic improvements to Maple including a modification to the central medial and accel/decel lanes.
- F. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. The building setback line should be deleted from the Reserve.
- J. The dimension along the front property line should be verified as it does not correspond with City of Wichita information.
- K. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay and its special conditions for development on this property.
- L. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all non-residential lots shall not exceed three times the width.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (10-0-1) **MCKAY** abstain.

4-10. SUB2004-30 – One-Step Final Plat – SISTERS OF ST. JOSEPH SIXTH ADDITION, located east of Hillside, on the south side of Lincoln (extended).

NOTE: This is an unplatted site located within the City. The applicant has proposed a zone change (ZON 2004-08) from TF-3, Two-Family Residential to GO, General Office.

STAFF COMMENTS:

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved.
- B. City water services are available to serve the site. A petition is needed for extension of sanitary sewer.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **Detention is needed along Lot 1.**
- E. **Traffic Engineering** requests a site plan to review internal circulation and the impact upon adjoining streets. **No access controls are needed.**
- F. As an office-zoned lot abutting non-arterial streets, the Subdivision regulations require sidewalks along Clifton and Bayley. **The Applicant will be providing a Sidewalk Certificate requiring sidewalks upon construction of adjoining sidewalks.**
- G. The plat's text shall include reference to "a lot and a block" in the owner's certificate.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that

the type of delivery, and the tentative mailbox locations can be determined.

- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve Item 10 and Item 4-10

HENTZEN moved, DUNLAP seconded the motion, and it carried (10-0).

4-11 A & B. DED2004-10: Contingent Dedication of Street Right-of-Way; and
DED2004-11: Dedication of a Utility Easement. Located on the east side of Sheridan, north of Ninth Street.

Dedicated By: Philip M. Stroot, 1250 N. Jefferson, Wichita, KS 67203 Phone: 361-3694

Generally Located: On the east side of Sheridan and north of Ninth Street.

Legally Described As: a) The east 30 feet of Lot 14; and b) the west 4 feet of the east 144 feet and the south 5 feet of Lot 14, Sroade Acres Addition, Wichita, Sedgwick County, Kansas.

Agent/Engineer: Mark A. Savoy, Savoy Company, P.A., 535 S. Emporia, Ste. 104, Wichita, KS 67202

Purpose of Dedication: As requirements of a lot split case (SUB 2004-21), these dedications are being submitted for: a) A 30' contingent dedication of street right-of-way along Sheridan; and b) an additional 4-foot utility easement for construction and maintenance of public utilities.

STAFF RECOMMENDATION: Accept the Dedications.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, DUNLAP seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — VACATION ITEMS**

5-1. VAC2004-10 – Request to Vacate Portions of Multiple Platted 25-foot Setbacks, located northwest of 123rd Street East and 21st Street North.

OWNER/APPLICANT: Twenty-First Growth, LLC, c/o Tim Buchanan

AGENT: MKEC Engineering Consultants, Inc, c/o Greg Allison

LEGAL DESCRIPTION: The south 5-feet of the platted 25-foot front yard setback as recorded on Lots 18, Block 1, the Hawthorne Addition, Wichita, Sedgwick County, Kansas.

The south 5-feet of the platted 25-foot front yard setback as recorded on Lots 1-8, Block 2, the Hawthorne Second Addition, Wichita, Sedgwick County, Kansas.

The west 10-feet of the platted 25-foot front yard setback as recorded on Lots 7, Block 1, The Hawthorne Second Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located midway between 21st Street North and 29th Street North, on the east side of 127th Street East, along Camden Chase Street and Rosemont and Peckham Courts

REASON FOR REQUEST: Allow additional space to build houses and to preserve existing hedgerows.

CURRENT ZONING: Subject property and all adjacent properties are zoned "SF-5" Single-Family Residential.

The applicant is requesting vacation of 5-feet off the platted 25-foot front yard setbacks on Lots 1-8, Block 2, Hawthorne Second Addition and Lot 18, Block 1, Hawthorne Addition and 10-feet off the platted 25-foot front yard setback on Lot 7, Block 1, Hawthorne Second Addition. Two sites are located on Cul-de-Sacs, with the front yard following the radius of the streets. The applicant proposes to build houses on all the lots, which have mature hedgerows located in the rear yards. The setback reduction will increase the likelihood of preservation of the hedgerows.

The UZC's standard for a front yard setback for the "SF-5" zoning district is 25-feet. If the front setbacks were not platted, the applicant could have applied for an administrative adjustment to reduce the 25-foot setback by 20 percent; a 5-foot reduction, which is what the applicant's are requesting, with one exception. The exception is the request to vacate 10-feet off the platted 25-foot setback on Lot 7, Block 1, Hawthorne Second Addition. If the setback was not platted the applicant would apply for a variance on the setback and would justify the request by satisfying the criteria for the variance; what is unique to the site/land that would allow a variance.

There is sewer, but no water, in a 20-foot easement located within the platted 25-foot setback in Lots 1-8, Block 2, Hawthorne Second Addition and Lot 18, Block 1, Hawthorne Addition. There is no easement or water or sewer located within the platted 25-foot front yard setback on Lot 7, Block 1, Hawthorne Second Addition. The Hawthorne Addition was recorded December 12, 2002. The Hawthorne Second Addition was recorded September 18, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties Planning Staff recommends approval to vacate the platted 25-foot setbacks as described in a legal description.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time March 4, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of the platted setbacks described in the petition should be approved with conditions:
- (1) Vacate the south 5-feet of the platted 25-foot front yard setback on Lots 1-8, Block 2, Hawthorne Second Addition and Lot 18, Block 1, Hawthorne Addition, stopping at their point of intersection with the platted easements on the sites.
 - (2) Vacate the west 10-feet of the platted 25-foot front yard setback on Lot 7, Block 1, Hawthorne Second Addition, stopping at its point of intersection with the platted easements on the sites.
 - (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (4) All improvements shall be according to City Standards.
 - (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the south 5-feet of the platted 25-foot front yard setback on Lots 1-8, Block 2, Hawthorne Second Addition and Lot 18, Block 1, Hawthorne Addition, stopping at their point of intersection with the platted easements on the sites.
- (2) Vacate the west 10-feet of the platted 25-foot front yard setback on Lot 7, Block 1, Hawthorne Second Addition, stopping at its point of intersection with the platted easements on the sites.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

NEIL STRAHL, Planning staff presented the staff report.

GENE RATH, MKEC representing the applicant. My recollection is that staff supported two of the vacation requests, Peckham Court and Rosemont Circle. They recommended five instead of ten. We asked for the entire 10 because there is a hedgerow that goes right through the middle of that lot, and there is not much buildable area in front of the hedgerow. I think the Subdivision Committee recommended that.

MILLER Though we had done what we were supposed to do, we are not in opposition to what you are requesting.

RATH I thought Mitch had a question.

MITCHELL I am the one who asked for it to be pulled because obviously those hedges were there at the time the subdivision plat was drawn. It does not make sense to plat lots with building setbacks and then come back and change the setbacks because you did not know where part of the existing facilities were.

RATH Good point, I do not have an answer for that. I am not sure why it was done that way. I guess your point is that it should have been reconfigured at the time or addressed at the time of platting.

MITCHELL That is correct. I do not object to this particular vacation, but I sure think we need to be more careful in the layout so we do not have to come back and change things because we did not pay enough attention to the lots.

MOTION: To approve subject to staff comments and citing the findings in their report.

DUNLAP moved, **MARNELL** seconded the motion, and it carried (11-0).

5-2. **VAC2004-11 – Request to Vacate a Portion of a Platted Setback, Drainage and Utility Easement, located between 21st Street North and 29th Street North, east of Woodlawn.**

OWNER/APPLICANT: James and Nancy Harris

AGENT: Baughman Company PA c/o Russ Ewy

LEGAL DESCRIPTION: That part of Lot 8, Block 1, The Village at Waterford, an addition to Wichita, Sedgwick County, Kansas, described as follows: The west 3-feet of the north 26.5-feet of the platted 20-foot drainage/utility easement – setback.

LOCATION: Generally located midway between 21st Street North and 29th Street North, east of Woodlawn Boulevard, more specifically southeast of the 25th Street North – Mainsgate Street intersection, 2609 and 2611 Cameron.

REASON FOR REQUEST: Remove existing encroachment

CURRENT ZONING: Subject property and all adjoining properties are zoned "SF-5" Single-Family Residential

The applicant is requesting consideration for the vacation of the west 3feet of the north 26.5-feet of the platted 20-foot drainage/utility easement – setback that runs parallel to the east property line of Lot 8, Block 1, The Village at Waterford Addition. The applicant proposes the vacation of the easement to remove the house's overhang of the roof out of the platted easement/setback. There is no sewer in the platted easement, but there is water in it. VAC2001-50 vacated the platted 10-foot utility easement running parallel to the north property line of Lot 8, Block 1, The Village at Waterford Addition. Conditions of VAC2011-50 included dedication, by separate instrument, of 10-foot of utility easement running parallel to the west property line of Lot 8, Block 1, The Village at Waterford Addition and a covenant binding Lots 8 & 9, Block 1, The Village at Waterford Addition together as one lot. The Village at Waterford Addition was recorded with the Register of Deeds August 13, 1993.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted drainage easement as described in the legal description with the following conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time March 4, 2004, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions:

1. Vacate the west 3-feet of the north 26.5-feet of the platted 20-foot drainage/utility easement – setback part of Lot 8, Block 1, The Village at Waterford.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. All improvements shall be according to City Standards.

4. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the west 3-feet of the north 26.5-feet of the platted 20-foot drainage/utility easement – setback part of Lot 8, Block 1, The Village at Waterford.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **HENTZEN** seconded the motion, and it carried (11-0).

5-3. **VAC2004-09 – Request to Vacate a Utility Easement and Utility/Drainage Easement, located north of Douglas, West of Meridian (on the northeast corner of Mt. Carmel and Sheridan).**

<u>OWNER/APPLICANT:</u>	Tim Malone
<u>LEGAL DESCRIPTION:</u>	See attached legal
<u>LOCATION:</u>	Generally located north of Douglas, west of Meridian (Northeast corner of Mt. Carmel and Sheridan)
<u>REASON FOR REQUEST:</u>	To allow for existing house within a utility easement; to allow for proposed garage construction within a utility and drainage easement
<u>CURRENT ZONING:</u>	"MF-29" Multi-Family Residential; "MF-29" Multi-Family Residential to the north and east of subject property

The Applicant is requesting to vacate portion of a utility easement established by separate instrument along the eastern portion of the property to allow for the encroachment of an existing house. This vacation will require the relocation of an existing sewer line. The Applicant is also requesting to vacate the south 10 feet of a 20-ft drainage and utility easement platted along the north property line to allow for the construction of a garage. An administrative adjustment is needed for encroachment of the house into the zoning setback.

The applicant is also advised that a variance is needed for the encroachment of the house into the street side setback along Sheridan.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 18, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement established by separate instrument, and the platted drainage and utility easement described in the petition should be approved subject to the following conditions:
 1. **City Water and Sewer Department** has required the relocation of the sewer line that is located within the platted utility easement. A guarantee is needed for its relocation along with a temporary easement in the event this relocation is not completed prior to this case being forwarded to City Council.
 2. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.
 3. **Utilities Representatives** need to comment on the acceptability of this vacation and any requirements.

4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

1. **City Water and Sewer Department** has required the relocation of the sewer line that is located within the platted utility easement. A guarantee is needed for its relocation along with a temporary easement in the event this relocation is not completed prior to this case being forwarded to City Council.
2. **Utilities Representatives** need to comment on the acceptability of this vacation and any requirements.
3. An administrative adjustment needs to be approved for the encroachment of the house into the side yard setback.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

NEIL STRAHL, Planning staff presented the staff report.

We are requesting that the Administrative Adjustment be approved along the east for the vacation to proceed. That is Item 2 of the conditions. I have already mentioned the relocation of that sewer line within the utility easement. The second line of condition 1 needs to be eliminated. Last week we discussed a guarantee was needed for the line relocation and a temporary easement. The Water and Sewer Department does not want that included, so that needs to be eliminated. Staff is in favor of the vacation.

GAROFALO Can you address all the concerns of people who wrote in, Bill and Deborah Longnecker.

STRAHL They have a representative here to discuss that.

MITCHELL What has been done to take care of the drainage that was supposed to use a 20 foot drainage easement? Has it been redirected somewhere?

STRAHL I was informed by Engineering that is not needed for drainage at this time.

MARNELL Did I understand that the current sewer line is adjacent to the east property line, but on an existing easement on that property.

STRAHL Correct.

MARNELL What is the justification for moving it to the other side of the property line?

STRAHL Since the house currently encroaches on the easement two to four feet, greater distance is needed between the house and that sewer line; it needs to be relocated to the east.

MARNELL Is there an existing easement on the other side?

STRAHL Yes, there is.

MARNELL Do we have the applicant for the easement here to address us?

TIM MALONE, Malone Construction. Addressing the vacation of the north property, the homeowners requested that he be allowed to put a 2-car garage on the property and that is why that is being requested. The drainage flows from the north of the property down to the south which would be the right side of this property. That is why there is not other drainage needed from east to west. Originally we asked for an administrative adjustment to place the house on site. Then we missed the fact that there was an after-the-fact easement that was placed in effect. That was an oversight, so we went to the Water and Sewer and asked what options we have available. They indicated if we move it to that lot, they would be willing to support that. That is why we are asking for that today.

BOB KAPLAN, Attorney for Bill Longnecker. He is from the Planning Department and simply asked if I would convey to this Commission his feelings in regards to this matter. Mr. Longnecker wants his objections on record. I have counseled Bill on matters related to this property and house that Mr. Malone constructed for him. I am probably in a better position to understand Bill's frustration with this thing. If this were a Board of Zoning Appeals matter, where we had specific legal criteria that had to be met, this would not occur. This would not be approved. Mr. Malone through his own carelessness and negligence built into the easement, an easement of which he was aware. Longnecker had nothing to do with it and no one else had anything to do with it. Mr. Malone was just sloppy, he built into an easement and that is unfortunate. That is his problem. He has asked the City to remedy the problem with a vacation of encroachment. I would suggest to you if there are no alternatives, I do not know if I would agree to come up here on behalf of Bill and convey any feelings because something has to be done. There is an alternative and that is to make a connection out in the street in Sheridan, and it can be done; it is an alternative. Jerry Blain of Water and Sewer does not like it very well because he says it is not as practical as putting in a manhole on the Longnecker's property. It is more cost efficient for a builder to go to Longnecker, to go to the east and relocate the line. It does not require any demolition and repaving in the street, which is an inconvenience because of some temporary traffic issue, but it is an alternative. Bill feels that he should not have another manhole on his property simply because the builder does not want to avail himself of a more expensive alternative. Water and Sewer will confirm that. They do not think it is the best way to go, but it can be done. Manholes are a tremendous source of infiltration, take water, covers get left ajar and removed and there are leakage problems. You can get infiltrations that can cause a service line to back up, and nobody wants a basement full of sewerage. Manholes have potential dangers for children and impair

the use of a backyard. Bill cannot build on the easement, but he has already got one manhole; he does not need another. In this case, there is some other place to put it. Bill just simply wanted me to convey his feelings to the Planning Commission because I feel strongly about it. He has some emotion about it, and it is better that he is not here and he also wants a record made. I do not know if Mr. Blain is here or not.

DUNLAP Mr. Kaplan, show us on the plat where that manhole would be and which property belongs to Mr. Longnecker?

KAPLAN Longnecker has this lot right here. I think is lot 7, and this is lot 8. What we are talking about is relocating the line still in the easement. He has an easement on his property now. He is not being asked to allocate additional property. It is just that the line is going to be moved to the east part of the easement in Longnecker's backyard, and a manhole will be added which is currently not there. So, it is going to come over in this area right here, so that this house will then be able to vacate that portion of easement on which it encroaches. The alternative is to come out to Sheridan and run this connection, instead of running it to the east, where it can connect to the main line. We have a letter and you should have it in your packet from Jerry Blain from Water and Sewer stating that can be done. He just said it is not as cost effective or as practical as taking it through Bill Longnecker's side of the property. Bill is saying I really do not care about that because it is not my problem. He did not create it and should not suffer the effects of it. Let him come out here to Sheridan, spend the money and assume his own error instead of Bill having to assume the error of the builder; that was pure careless or negligence. Longnecker should not have to pay the price for it as long as there is an alternative.

MARNELL Do you know if that sewer line is located in such a place that it could be just left in place? Is this more of the mentality we need so much space since there is an easement on both sides? It would seem like access would still be there if it needed repaired.

KAPLAN I do not know that the house actually encroaches the line itself. I know it encroaches the easement. Whether the house is build over the line, Neil says not. He does not believe so. You are going to have a structure which I guess unlawfully encroaches an easement, but is not going to prohibit the service of the line. It should not cause any problem. Neil has given me a graphic showing the line to be 5 feet east of the dwelling. There is access for small equipment if the line had to be dug up. I guess the answer from a practical standpoint is we do not have to do it; from a legal standpoint, I do not know.

MARNELL If you vacated a portion of the easement that the house is actually on, would that not resolve the issue of having to move it?

KAPLAN That would be moving the line, and I am sure Mr. Longnecker would be gratified if that is the action you took to vacate that portion of the easement, but not compensate by not moving the line to the east. I am sure Bill would be very appreciative of that. He is quite distraught about it.

TIM MALONE, Malone Construction. The first request of Jerry Blain was to vacate that portion of the house, and there is 5 feet plus a little on the house you are looking at. I researched the matter. The line is 11 feet deep, any backhoe would be around 8 feet. There is still approximately 15 feet of space to access that line. I think Jerry's feeling was that he was trying to protect his interest and the City's interest in that matter. But, that would again be the most preferable solution for me as well if that would be possible. I would recommend that suggestion. Would anybody be curious to see the map of how it lays?

SCHLEGEL It is a requirement of the Water and Sewer Department to move the water line. Now the applicant is requesting the vacation because he has a building encroaching into the easement. What he is trying to do is get that encroachment for the building removed, for that homeowner. My understanding is requiring him to move the sewer line further away from the house because of the encroachment. They want a safe distance from the house to the sewer line. Am I stating this right, Dale? It is the requirement of the Water and Sewer Department that is dictating the movement of the line, not the vacation action.

MARNELL I understand, but I do not know what authority they have to come along if they do not like how close the sewer line is to my house to say they are going to move it and make me pay for it?

SCHLEGEL They will not allow him to connect to their sewer system.

MARNELL It is not the vacation, but they will use the connection to the sewer system.

SCHLEGEL Correct.

MARNELL As the hammer, as the bottom line.

SCHLEGEL Yes.

MILLER The other option has been used in past as a hold harmless agreement, but the problem with that occasionally is that you cannot get lenders to lend money on a house that has a hold harmless. I do not know how big of a deal that is, but you generally see BZA variances and vacations cases where that has been the issue.

MALONE That has been the issue here.

BISHOP I am just trying to sort out what our options are. John, are you saying that the option at this point of saying we agree to the vacation, but only for that part of the easement that is actually under the building?

SCHLEGEL The request is to have the easement vacated underneath where house was built.

BISHOP The rest of easement, that little gray line, will still be there.

SCHLEGEL I was just talking about the one on the east property line.

BISHOP The part that is outside of the house?

SCHLEGEL That stays in place, they are not vacating any of that easement.

BISHOP It is a battle between the homeowner, the builder and the Water Department.

SCHLEGEL Correct, you cannot grant relief to the vacation of the water line. I was only trying to clarify that by acting on the easement, you cannot influence the location of the sewer line.

BISHOP I was under the impression that the vacation of the easement was the entire easement, that west of Mr Longnecker's property.

GAROFALO It is the existing part under the building. Even if we did that, then the Sewer Department could, and would, still require the movement, or shift the boundary of the sewer line.

SCHLEGEL Right.

DUNLAP I would like to know from staff if that garage is built yet?

STRAHL No, that is a proposed garage.

SCHLEGEL Can I ask a question of Neil? Neil, will vacation of that particular portion of the easement influence the location of the sewer line?

STRAHL The north easement no, that was just due to the construction of the garage.

MITCHELL I do have one more question. Neil, can you show where a new manhole would be located to comply with the Sewer Department's request.

STRAHL My understanding is that it would be approximately on Mr. Longnecker's property, on the northwest corner of his property.

MITCHELL I understood him to say that he did not want 2 manholes on his property.

STRAHL Yes.

MITCHELL Where is the other manhole located to the one already on his property.

STRAHL I believe it is on southern portion of the property, about right there.

MALONE On the northeast corner of this lot, an existing manhole is 10 feet to the south and about 20 feet to east. The new manhole would be in the line following that about 5 feet to east.

MARNELL I think those will probably be issues to be dealt with by the Water & Sewer Department.

MALONE Chair, move for approval subject to staff comments.

DUNLAP I am not sure I understand what we are doing.

MALONE Vacating of easements, both easements.

DUNLAP But, we are not solving the problem of removing the sewer line.

MALONE That is not part of the issue here.

DUNLAP We are not solving the problem of putting a manhole on somebody else's property. We are not solving the problem of building a garage over a drainage area, and we are not solving a problem where the house is. All we are doing is approving a vacation. That portion of the house that is on the easement.

MARNELL Correct.

DUNLAP Now that I understand, I will second the motion.

BISHOP I would like to question the language. Neil, it says the applicant is requesting to vacate a portion of the utility easement as established by separate instruments along the east portions to allow for the encroachment of the existing house. This vacation will require the relocation of an existing sewer line.

STRAHL Water and Sewer would not agree with the vacation unless the conditions could be met.

DUNLAP What you just said was that when we approve this vacation, we are going to force the sewer line to be moved. Is that what you said? Cause that is it not what I seconded.

SCHLEGEL That is an accurate statement of the consequence of this vacation act. But, if they do not vacate it, then he has to remove the encroachment from this easement. That is the consequence of the not granting the easement. Whatever action you

take today, there is a consequence. If you grant an easement vacation, then the sewer line has to move according to the Water and Sewer Department. If you do not grant the easement vacation, then the builder has to go back and remove the portion of the house that is within that easement. Now the sewer line can stay there of course, but somebody has a problem with the buyer of this house. That is why he is asking for this easement.

BISHOP It was pointed out that the Water and Sewer Department has said grudgingly that would be an option for connections for the home.

GAROFALO Are you talking about the street?

BISHOP Yes, connecting to the street.

SCHLEGEL No, if you disallow this easement, then they have to remove the portion of the building that encroaches into the easement. I do not know why the option that Water and Sewer offered of taking to the street has not been exercised. We need more information on that.

MCKAY Can the Planning Commission approve this vacation with the caveat that instead of building on a new lot, that the builder attach to the one off of Sheridan Street as a first alternative.

SCHLEGEL You are suggesting a condition of the approval of the vacation, the easement would be that they exercise the option.

MCKAY Right, to go up.

SCHLEGEL Otherwise, they will not be able to have the vacation of the encroachment. I guess you could do that.

MCKAY Can I make substitute motion or do we want to add that to your motion?

SUBSTITUTE MOTION: Approve subject that a new line not be built, but that the builder attach to the line that is available off of Sheridan Avenue.

MCKAY moved, **BISHOP** seconded the motion.

MARNELL Do we want to hear from the applicant?

MCKAY We already have a motion made, it is strange to hear from the applicant after the motion has been made.

MALONE I would simply ask that the line be allowed to stay where it is at, and we be allowed to tap into the line on the east side of the property. This would create quite an additional cost trying to connect from Sheridan which is just up the street; going merely to the line that is on the east would be the logical solution. If that line is going to stay there, why not tap into it.

MCKAY I am not sure it is going to stay that way.. Number one, this is going to be subject to the line being relocated. That is the whole thing. It is not that you can vacate it and then do whatever you want to do. The idea is you have to pay to have a new sewer line ran. That is what Mr. Longnecker had the opposition to, and now that has got to be ran over to on his lot. I do not think that is an option, that you can tie onto. It is whether or not you have to pay for a manhole for relocation of a sewer line or run your sewer line to the one on Sheridan.

MALONE Should not the line be allowed to stay on the east side of property without being relocated, but yet tying in the house into the Sheridan line. Is that correct?

MCKAY That is my motion if you do not tie in the east when you go across. One of the conditions was they would have to relocate that line.

SCHLEGEL That is what the Water and Sewer Department is going to require if this easement is granted, and they do not have to exercise the option of extending the line over to Sheridan.

MALONE My understanding of Jerry's issue is that where we connect our house to which line is merely that the line to the east is near the house. My comment is if the line is allowed to stay where it is at, why should not we be allowed to tap into that line?

MCKAY That is a condition of the Water & Sewer people. They want to relocate that line. They have a distance in their line so they can get in and work on it. They are going to relocate it. You are too close to that. To me it is a lot cheaper to run it over to Sheridan, than to pay for a new line.

MALONE Thank you.

SCHLEGEL There is another option here.

MCKAY What is the other option?

MARNELL Withdraw both motions and then defer or we just hold off voting and have Water and Sewer come up so we can know where this is going to go. They may still require that it be moved.

MCKAY Defer.

MARNELL Do you want to withdraw your substitute motion?

MCKAY Yes.

MARNELL I will withdraw the original motion for approval.

BISHOP I withdraw my second to the motion.

MOTION: To defer until the April 23 meeting.

MARNELL moved, **DUNLAP** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — ZONING ITEMS**

6. **Case No.: CON2003-48** - Richard D. and Verda Hoskinson / Baughman Company (Terry Smythe); Capps Machine (Ron Capps) Request Conditional Use for community assembly on property zoned "SF-5" Single-family Residential on property described as;

That part of the Northwest Quarter of Section 15, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas lying west of and adjacent to the extended west line of Spinnaker Coves-Hoskinson Addition, Wichita, Sedgwick County, Kansas and lying east of and adjacent to the extended east line of Country Acres Fourth "B" Addition, an Addition in Sedgwick County, Kansas, all being subject to road rights-of-way of record. Generally located On the south side of 13th Street North approximately 1/4 mile east of Ridge Road.

MAPC DEFERRED JANUARY 8, 2004, and MARCH 11, 2004

BACKGROUND: The applicant is seeking a Conditional Use to permit "community assembly" on a 25-acre site that is located on the south side of 13th Street North, ¼ mile east of Ridge Road. The applicant would like, at some point in the future, to develop the site for a Midian Shrine temple (see attached site plan). At this time a construction schedule has not been determined. The temple would be a two-story, maximum height of 35-feet, 27,000 square foot building located approximately 1200 feet south of 13th Street. Although no elevation drawings are available at this point in time, the site plan indicates the building would have architecture compatible with the surrounding area. (Homes to the west were developed after 1959, and constructed of both brick and wood, while the single family homes to the east were developed in the 1990's, and are also a combination of wood and brick construction.)

Parking for 216 vehicles would be located east and south of the proposed temple. Parking is to be screened to the east, south and west, as shown on the site plan.

A playground containing baseball/softball diamond and a soccer field is proposed south of the parking area. These ball fields are to be used by Shriners and their families. The ball fields are not intended for use for large-scale league play like the West Urban fields located to the north.

A 6,000 square foot restroom and storage building would be located west of the parking lot, between the temple building and the playground.

Primary access is to be provided by a long driveway connecting the temple with 13th Street. A second point of access to the site would be a gated and restricted to emergency access only connection to Hazelwood, a residential street located to the west.

The site plan also shows berms and landscaping to be installed along both sides of the application area between 13th Street and the southern end of the parking lot.

The applicant indicates that during a normal workweek 10 staff members are generally present Monday through Friday who maintain office hours of 8:00 a.m. to 5:00 p.m. On a typical day approximately 75 non-employees visit the site; that number increases to up to 100 for typical evening meetings or functions. The maximum number of people who typically attend their largest functions is approximately 300 people.

Property surrounding the site is zoned a variety of residential districts: "SF-5" Single-family Residential, "SF-20" Single-family Residential and "MF-29" Multi-family Residential. Surrounding properties are developed with: public park, single- and multi- family housing. There is a lake located immediately east of the application area that is mostly owned by the Spinnaker Cove subdivision.

The site plan depicts two monument signs at the entrance of the site at 13th Street. The "SF-5" zoning district does not permit this type of signage. A variance from the Board of Zoning Appeals would have to be obtained to permit the proposed signage.

Community Assembly is defined in the *Unified Zoning Code* as "an establishment providing meeting, recreational, educational, cultural, or social facilities for a private membership or non-profit association, primarily for use by members and guests. Typical uses include fraternal organizations...."

CASE HISTORY: None filed. There was interest at one time by the owner to purchase the two parkland tracts located west of the site and then develop the larger site with multi-family residential housing. That proposal met significant neighborhood opposition at Park Board hearings. The proposal did not progress to the point that a zoning case was filed.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" Single-family Residential; County park/zoo

SOUTH: "MF-29" Multi-family Residential, "SF-5" Single-family Residential; Apartments, vacant
EAST: "SF-5" Single-family Residential; lake, single-family residential
WEST: "SF-5" Single-family Residential; public park, single-family residential

PUBLIC SERVICES: Services are available for extension.

CONFORMANCE TO PLANS/POLICIES: The *Wichita Land Use Guide* depicts the site as appropriate for "low density residential" uses. The low density residential category provides for the lowest density of urban residential land use and consists of traditional single-family detached homes, zero lot line units, cluster subdivisions, schools, churches and similar uses found in such areas. The Plan also contains an objective about encouraging future growth and development in areas that are served by existing public facilities and services, or which can be served economically and promote compact and contiguous development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year, and the following conditions:

1. The site shall be developed in substantial conformance with the adopted site plan, including any development standards listed in the "general provisions" section of the site plan.
2. Signage shall be as allowed per the Sign Code, e.g. one bulletin board sign up to 48 square feet in size per arterial street frontage, and identification signage with letters up to 15 inches in height. (The site plan initially submitted with the application includes a request for two monument-style signs to be located on 13th Street. That signage is not permitted by the current Sign Code, and will require a revision to the site plan unless a variance is sought and granted.) Portable signs shall be prohibited.
3. Any buildings constructed on the site shall have architecture that is compatible with surrounding residential construction (e.g. gable and/or hip roof), and metal shall not be used on any exterior building façade.
4. Parking lot lighting standards shall not exceed 14 feet in height. All outdoor lighting fixtures shall employ cut-off luminaires that minimize light trespass and glare. The light source shall be aimed and/or shielded so that the light source is not visible from neighboring lights.
5. Trash receptacles and HVAC units shall be screened from view from the ground.
6. Lighting of outdoor recreational play fields shall be prohibited.
7. After appropriate reviews if the Zoning Administrator, with the concurrence of the Planning Director, finds that there is a violation of the conditions of approval of this Conditional Use, the Zoning Administrator may declare this Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property surrounding the site is zoned a variety of residential districts: "SF-5" Single-family Residential, "SF-20" Single-family Residential and "MF-29" Multi-family Residential. Surrounding properties are developed with: public park, single- and multi- family housing. There is a lake located immediately east of the application area, and there are some undeveloped tracts. The application area is a passed over tract that adjoins a mix of vacant land, and older and more recent developments.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Churches and schools are permitted uses in the "SF-5" district. Approval of this requested Conditional Use would permit a facility that is similar in intensity of use and hours of operation when compared to a church or school. The single-family residential units to the east and west will be buffered by existing parkland, the existing lake and/or the proposed berms and landscaping shown on the site plan.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would encourage the development of a site that remains vacant despite the fact that surrounding land has been developed. With "SF-5" zoning, the site has a short list of permitted uses. Denial of this request would eliminate a potential use for this site, making it more difficult to develop. Denial would force the applicant to find another site.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Wichita Land Use Guide* depicts the site as appropriate for "low density residential" uses. The low density residential category provides for the lowest density of urban residential land use and consists of traditional single-family detached homes, zero lot line units, cluster subdivisions, schools, churches and similar uses found in such areas. The Plan also contains an objective about encouraging future growth and development in areas that are served by existing public facilities and services, or which can be served economically and promote compact and contiguous development. Approval of the request would promote the community's goal of encouraging infill development, and be consistent with the Plan's recommendation of allowing uses similar to churches and schools in low -density residential area. A Shrine facility could be viewed as similar in character and impact to a church or school, both of which are permitted by right in the "SF-5" district, with respect to hours of operation, traffic generated and numbers of people present.
6. Impact of the proposed development on community facilities: Facilities are in place or are available for extension to adequately handle anticipated impacts created by this request.

MILLER As I recall, the motion that was approved last time was for the applicant, and the two neighborhoods to get together, and resolve the issues that were brought up at the original hearing. One issue had to do with the use of the Spinnaker Coves' lake, and how that could be managed if this request was approved. On the other side, Country Acres folks wanted to make sure that the parkland was going to remain, and were concerned with how emergency access is to be taken onto Hazelwood. It is my understanding that there have been multiple meetings, and rather than me going into who said what, I will answer questions as to

what I can, and then refer questions to the applicants who are here. Staff is still supporting the request as we were in the original report.

BISHOP I don't remember the outcome of the DAB.

MILLER It was for approval.

TERRY SMITH In the last 90 days we have had numerous meetings between Country Acres on the west, and Spinnaker Coves on the east. The negotiations with Country Acres has been successful, unfortunately the negotiations with Spinnaker Coves has not been.

JEFF SOWDER, Chief Executive Officer of Median Shrine, 130 N. Topeka I am speaking on behalf of the Median Shrine.

On January 8, there was a change in the Conditional Use permit for the piece of property that first came before this Commission. At that meeting we were instructed to attempt to work out the differences that existed on a variety of issue between Median Shrine, Spinnaker Coves and Country Acres. We were to report back at the March 11 MAPC meeting, but we requested an additional 30-day deferment to continue negotiations with Spinnaker Coves and Country Acres.

A letter was mailed to the Spinnaker Coves homeowners association on February 10th inviting all of the members to be guests at Median Shrine to resolve all their concerns. On February 19th, the Spinnaker Coves homeowners association sent two representatives of the association, Mr. Larry DeBrot, and Mr. Butch Ginest, to the meeting hosted by Median Shrine. The concerns of Spinnaker Coves were as follows: 1) Maintenance and cleanliness of the west bank, Median agrees to keep all trash clean from the property and to see that maintenance would be done on the west bank of the lake; 2) Mowing of the grounds, the lack of mowing has been an issue with the residents of Spinnaker Coves, Median has agreed to see that the property is mowed on a regular basis to ensure a good visual appearance of the property; 3) Building appearance, concerns about the appearance was expressed, and Median has assured all parties concerned that the building will be constructed to conform to all existing neighborhood rules, and will be an asset to the community; 4) Parking lot lighting, assurances were given by Median that any outside lighting of the facility would have height restrictions, and would be directional in nature; 5) And finally, sports venue lighting, Median has agreed to limit all activities on all sports fields to daylight hours only, with no lighting to be installed.

The three issues that remain unresolved with Spinnaker Cove are as follows: 1) Insurance. Spinnaker Coves has maintained that they will be unable to obtain insurance for their common grounds and their portion of the lake if Median Shrines becomes landowners of the property. Median Shrine has received a firm quote for insurance for our side of the lake.

2) Lake Usage. Spinnaker Coves has many rules governing the lake between the two pieces on the property. Median Shrine has informed Spinnaker Coves that we intend to abide by the lake rules now in affect. They have now since informed us by letter that they are now amending the lake rules with stricter rules and provisions. Median will continue to agree to the existing amendment to the Declaration of Covenant, Conditions and Restrictions of Spinnaker Coves -Hoskinson Addition (File 2164, Page 1073) which declares the right to use the lake by Median and further ensure that the right to use the lake can not be removed without the consent of Median or the current property owner. This entitlement to use the lake with current rules was signed by the Spinnaker Cove Board of Directors on March 14, 2001, and recorded with the Sedgwick County Register of Deeds on March 19, 2001. Furthermore, the changing of the lake rules is probably in violation of their own legal covenant if Mr. Hoskinson, the current property owner, was not invited to these meetings and allowed to participate in the discussions. Mr. Hoskinson has informed Median, through his real estate agent, that he was not invited to attend any of the meetings concerning the changing of the lake rules. I believe we all recognize that this agreement on their part to have this declaration made may have been founded on expectations of over 60 single-family lots on this piece of property. Median has previously agreed with Spinnaker Coves to abide by all of the rules regarding the number of boats, the size of the motors on any boats, and how many fishermen are allowed at any one time. Their concern about Median members "over fishing" the lake is unfounded and without merit. With Median planning to plat the entire property into a single lot, it is certain this would be much more desirable than having 60 homes on this property, each with the same rights as Median would now have.

3) Option to purchase the applicant's portion of the lake and west shoreline. Spinnaker Coves homeowners association expressed a desire to purchase that part of the lake they presently do not now own, and a piece of the west shoreline consisting of approximately 4 acres. An offer was received from Spinnaker Cove that offered Median only "average" price per acre for this property, even through we all recognize that the lakefront property is much more valuable than the acres located in the rear of the property. This offer was deemed to be not fair and equitable by Median and was rejected. To date, no further offer has been forthcoming from Spinnaker Cove.

Due to differences in opinion, we regret to say that it is our belief that these remaining three issues will probably not be resolved to the satisfaction of both parties involved in the near future. It is our understanding that the primary purpose of this meeting is to insure that a proper and suitable use of this property is met. Median feels that is has made good faith efforts to settle all outstanding issues that can currently be resolved. Those issues remaining should not be a reason to vote against the special use permit, as they do not involve issues involving constructions, lighting, or other building issues that would come within the authority of the MAPC.

Letters were sent to all residents of County Acres with know concerns about the changing of the special use permit on March 10, 2004. Median hosted a meeting with the residents of Country Acres on March 25 with nine Country Acres residents in attendance. They expressed concerns on the following issues:

1) Bike Path/Adopt a Park. Median had been informed that residents of Country Acres would welcome a bike path and walking path that would connect the two pieces of property at the north and south ends of this property. Median went to the Park Board meeting on March 8, 2004, and had offered to allow an easement for a bike path/walking path down the west side of this property that would connect the two pieces of Park Board property, and offered to adopt approximately four acres of parkland at the south end of this property. At our meeting with Country Acres residents, they informed us that they are not in favor of this walkway easement as it

would allow people to walk nearly in their backyards, and it becomes a neighborhood safety concern. They also expressed a strong interest in adopting the park themselves, as they had previously been active in the maintenance of the park area. Midian, in the interest of being good neighbors to the residents of Country Acres, have agreed to go back to the Park Board and ask for reconsideration of both of our offers, and ask that Country Acres be allowed to adopt the parkland.

2, 3 and 4) Emergency Entrance, Gating and Fencing. The residents expressed their concern about the emergency entrance that Midian has been told will be necessary off Hazelwood to the property. This would be a gated entrance with access available only to emergency personnel. Discussion about the entrance, the gate and its positioning, and the fence running for a short distance off the gated area were agreed upon by all parties.

Landscaping. County Acres expressed their preference for shrubs and berms along the entry to Midian's property as opposed to a fence along the west boundary. We both fully agree that nice landscaping will be used in these areas as described in the site plans.

Lighting. Again, concerns about the lighting on ball diamonds, soccer field, parking lots and storage buildings were discussed. Midian agreed to limit any sports activities on proposed fields to daylight hours only, with no lighting to be installed. Parking lot lights would be directional with height and brightness limitations. Any storage building lighting will be limited wherever possible, and motion lighting will be used whenever possible.

Drainage. Midian assured the Country Acres residents that proper drainage techniques will be used during construction so that run off water will not drain back towards Country Acres homes.

Other Items: Fire hydrant locations, the access of construction vehicles from 13th Street only, the construction type of the building and the mowing and adoption of the south park area were all discussed with agreement by everyone in all areas.

In summary, the residents that were present at this meeting were given assurances by Midian representatives that our primary concern is to be a "good neighbor." The meeting proved to be very insightful, and agreements on all the above issues were reached. While a resolution has not been reached on every issue, I truly feel that Midian Shrine has made every attempt to satisfy the questions that have been raised by Country Acres and Spinnaker Coves. This property is now zoned for single family housing with 5,000 square foot lots. We feel the construction of a Midian Shrine facility would be a much better option for all involved than 60 single-family housing units. Midian Shrine is proposing a facility that would continue to allow for large amounts of "green areas and a park-like atmosphere" that fits nicely into other close-by facilities such as the Sedgwick County Park and the Sedgwick County Zoo. We have always been good stewards of the community, and it is our intention to be a good neighbor in this community as we continue our mission of providing aid, community service and support for all mankind. I would respectfully ask that the commission give an affirmative vote for this special use permit.

MITCHELL Mr. Sowder, do I understand that you agree then with the residence of the Country Acres not to give the 30 foot access connecting the two pieces of park?

SOWDER We have agreed to go back to the Wichita Park Board and ask them to rescind that only because it is there desires to do that. We were informed early on before we went to the Park Board and before our meeting with Country Acres, that they thought this would be a good thing. We were told that erroneously. And so now we are going to go back and ask that that be rescinded only because it is their wish. I can certainly understand the concerns about the safety of the neighborhood, with people walking up their back yards.

MITCHELL I'm sorry, but I can understand the concern about people that would not want a public access to parks adjacent to their property, but that is not your problem.

SOWDER We are just trying to be the good guy on this thing, and take the part that we think is best for the community, and that is what they expressed to us.

MITCHELL One other thing I wanted to clear up is that I have had an exparte contact with the owner of the property, and the agent that represents the applicant today, the Chairman or the president of the Parks Commissioners, the Park Director, and the City Council member of this district all having to do with the park atmosphere of this area and the relationship, and it has not made a difference in the way I will vote today.

MARNELL Any further questions for the applicant?

LES BRUMLEY, 6606 Warren Circle I am here to speak on behalf of the Spinnaker Coves owners association. I want to point out that that represents about 22 million dollars in investment real estate. We are not here to discuss all of the problems that we have talked about before or two months ago. It is interesting Mr. McKay, you have asked a very important question. January 8 you asked how would they (the Shrine) use the lake? Mr. Ron Capps, representing the Shrine, said we plan to plat this as one lot and our members may or may not want to fish the lake. You showed further insight when you pointed out the potential for 3,400 members fishing this lake. You then asked "is there any kind of agreement that you can make with SCOA, like not using the lake?" That was your idea. Then you said "perhaps minimal use of the lake". Mr. Capps responded saying all of these things are on the table. We received a mandate from you folks. Mr. Marnell you said the "applicant expresses willingness to address the concerns and to work with the association", per Mr. Capps." Therefore the burden to work with SCOA is on the "applicant" i.e. The Shrine. Mr. Marnell, Dunlap, & McKay you also urged SCOA to work with the Shrine. Mr. Marnell you said, "I hope they would work together."

The Shrine contacted SCOA by phone requesting a meeting; the date of February 19 was set. The Shrine sent a letter confirming that date and they requested; notice all the requests they make here. They requested information on lake expenses; they requested information regarding information about insurance and policy coverage, so on and so forth. On February 16, we sent them a letter, responding in writing with our concerns about the land use and the problems we had with the quasi-commercial liquor license use in our backyard. We made the first offer, first off, no use of the lake, regardless of the boundaries. The Shrine would consent to give

up lake rights. They would give SCOA a one year option to purchase the west bank in exchange for these three simple things we promise support for CON-48.

On February 19, we actually meet with them and discussed west bank maintenance. We discussed restocking of the lake. We had our policy in hand. They said they wanted to compare policies. We came with ours. They did not have one. They have not produced to us, as to date, anything in writing proving that they have insurance or that we could get insurance. The next day they sent us a letter requesting more information regarding point number three of our offer. Basically, let's be honest how much land, how much money are you willing to spend. SCOA sent another letter on March 8. It contained information about the offer, points number one and number two stayed unchanged. Points number three is as follows: we confirmed interest in approximately 4 acres of land, the price being \$56,000.00, which is a pro-rata offer based on the current land contract. In exchange for this SCOA promised support of CON-48.

The Shriners sent back a letter saying they were disappointed in the dollar amount; they rejected our offer without any kind of counter offer back to us. They did say again, we would gladly entertain any further offer that you would like to make. SOCA believes that the offers have not been made to the membership. SOCA went ahead and said, listen we are disappointed in rejection, and we don't think you are dealing with us in good faith. You have not put anything on the table. They have not come to us with one single compromise for our concerns. Apparently, Mr. Capps statement of "everything is on the table", was insincere at best. The Shrine has not made any offers to cover the main problem in our hand. Thus the Shrine has failed to live up to their burden that you give them to negotiate with us in good faith. The conclusion of the matter is SCOA has no choice but to oppose the application for Conditional Use. Please deny the application.

ALAN COLLISON, 6513 W Warren This has to deal with insurance concerns. Our lake is the centerpiece of our Association, but also it is a 25-acre safety hazard. We want to continue to protect ourselves from lawsuits by accidents or drowning. Currently we are insured with State Farm. They have told us in writing that they will discontinue insuring Spinnaker Coves if the Shriners, with approximately 3,500 members have access to the lake. I was kind of put in charge to find alternatives.

In addition to State Farm, we have many different companies express interest. In your power point you can see all the listed companies that we have contacted, American Family, Continental Western, EMC, United Fire and Casualties, and Zurich will not consider insurance protection for Spinnaker Coves with this association of 3,500 members being next door to our lake. The Shrine provided a representative on their behalf, their insurance agent is a member of the Shrine, is a good guy, Dan Hawkins, with Advantage Insurance, and we were assigned to work jointly together to see if we could find some companies that would entertain insuring Spinnaker Coves with the arrangements of Midian. As communicated in an earlier meeting of 2/19 between Spinnaker Cove and the Shriners, only an insurer not authorized to do business in Kansas would provide coverage (i.e. excess or surplus carrier). They would not be considered. You can ask what is an excess or surplus insurance carrier? A policy issued by an excess or surplus insurance is not authorized to do business in the State of Kansas, as such the policy contract, and the trade practices and the financial condition of the insurer, the rates or premium increases are all not subject to review by the Kansas Department of Insurance. So clearly going through an excess or surplus insurance carrier is very risky business. It is my understanding that the quote that the Shriners say that they do have insurance is through Nautilus Insurance Company. They are an excess/surplus Insurance carrier. I have provided a list from the Department of Insurance of all the excess/surplus carriers registered for Kansas, and Nautilus is one of these carriers. With all the issues of premiums, there is no control by the insurance department, and we felt that is not a viable solution, and that is what we agreed to on the 2/19 meeting. The bottom line, to date, is the Shriner's Insurance expert has been working for the last month but has not provided any Kansas authorized insurance company that would insure Spinnaker Coves lake if the change in Conditional Use is approved.

DUNLAP Your insurance carrier has told you that you will be cancelled if these people buy the property?

COLLISON If they have access to the lake; that is correct.

DUNLAP Is that just this organization or is anybody who buys that property and has access to the lake?

COLLISON We handed them the proposal and they didn't want to work in hypothetical situations.

DUNLAP So we don't know, at this point, if a housing area were to go into there if they have access to the lake, whether or not the insurance would be valid?

COLLISON Correct

HENTZEN Do you have liability insurance now?

COLLISON Yes we do with State Farm, but they told us they would cancel with that tremendous, approximate 3,400 - 3,500 members having access to the lake. They do not want that exposure. That is too much of a risk. They told us at renewal they would drop us.

HENTZEN If the Midian Shrine does not insist on lake rights, you don't have a problem?

COLLISON That is what our State Farm Insurance carrier has told us. They can be our neighbor, they just can not access the lake.

HERNANDEZ How long have you lived there at Spinnaker Coves?

COLLISON I have been out there for seven years.

HERNANDEZ To your knowledge has the association or anybody filed a claim with the carrier for whatever reason?

COLLISON No one has ever filed a claim with the insurance carrier.

HERNANDEZ I don't live near a lake, so I don't know what it is that they would cover, could you give me some examples of liability?

COLLISON If someone drowns in the lake, which obviously with water, it is a concern. It is a tremendous hazard. There are quite a few insurance companies that will not even entertain looking to insure the hazards of somebody drowning, somebody getting hurt, and with water that is always a risk, so it is those type of things.

HERNANDEZ If I go to Cheney and I drown, my wife is going to collect a large sum of money from somebody. Is that how it works?

COLLISON It is all based on negligence. Did we post appropriate signage? There are a lot of variables. An investigation would be done and they would have to look at are we negligent in some fashion.

GAROFALO Beside this issue of insurance and the use of the lake, are there other issues that are important to you or your organization?

COLLISON Yes.

GAROFALO There other issues disputed?

COLLISON I am going to let another speaker talk to that. I am specifically on insurance issues.

GAROFALO So someone else will address this issue?

COLLISON Correct.

BARFIELD Do you have insurance at the present time? This property is zoned for single-family, so one would have to assume that if the homes were built your insurance would still remain in effect, would you not agree?

COLLISON If homes were built on the other side, across the bank, I guess I would make that assumption, but I don't know that for a fact. I have not presented that to all these insurance carriers.

NEIL GINEST, 6602 Warren Circle What I tried to do is a cost benefit analysis by who would gain if this application is approved. First I started with the seller, Mr Hoskinson, what's he stand to gain, profit on the sale of a unique piece of land, that is certainly a gain. Six figures in the sum of cash for the sale, no more taxes and insurance costs, no more mowing. Whoops, he didn't do a very good job of that, so I can't say it is a gain. Clearly though Mr. Hoskinson has some gains to be had.

What does Spinnaker Cove gain? Three thousand four hundred new neighbors, a bingo parlor, a restaurants, a business office, a bar, a temple, a dance hall, a sports complex, higher security cost, increase lake costs, a commercial facility rental business, a significant loss in property value and at least two times a year we would be able to see the area crawling with camel herders and clowns and every kind of vehicle one can imagine. I don't see that clearly as a gain.

What does Midian Shrine stand to gain? As I best can determine, they hope to gain what they see is a way to increase their membership. Sort of if they build it they will come philosophy. I hope they are successful wherever they end up. On their web site the Shrine of North American has lost 410,000 members, that is 44% of their members between the years of 1990 and 1999. Unfortunately there is also talk about closing some of their hospitals. Based on what I can learn about the membership of the Median Temple, it has also decreased by 2,000 in the past 10 years. Their goals will be difficult to attain. They do see a gain as they move out of downtown as they see its dead. This from an organization who continually opposes the city's attempt to form a special tax district for the revitalization of downtown. In the minutes of the City Council meeting on January 27, 1998, a Shriner, Warren Resner, said the tax would place an undue hardship on its members. It would not provide any benefit to them, and there was no money to pay the tax. Seems interesting that they see a gain here in that they can spend a six-figure amount for land, and hope they can raise the money to build a temple. They also get to pay higher taxes and up keep costs. They will get a very limited access to a lake.

What does the City and County stand to gain? A loss of a downtown property owner and an occupant. They do gain on infill of a very difficult parcel of land. Gain a potential loss in tax revenues, and to demonstrate that you can see the 2004 appraised value of property in Spinnaker Cove is right at 20 million at the 2003-mill levee that is generating about \$260,000 in taxes. A 10% reduction in our property values equals a \$260,000 loss for the City and the County. At 5% reduction generates a \$130,000 loss. There is no gain here, as the proposed development can't make it up. If we assume the price that they are paying for \$365,000 will be the initial appraised value, that would generate only, again based on the 2003 mill levee, a little over \$5,000 worth of income. So what we are really saying here is that the potential net loss of \$130,000-260,000 in tax revenue from Spinnaker Coves doesn't include Country Acres. To gain \$6,000 a year until the temple is built doesn't seem like much of a gain. The bottom line is Spinnaker Coves will not realize any gain and in fact will suffer losses. The City and the County has little or nothing to gain but has a high potential loss for tax revenues. I don't see that Midian really gains anything other than the land, and the hope to raise the money to develop it. Other than agents, attorneys and the like, Mr. Hoskinson appears to be the only one that stands to gain, but does so at the expense of others. Finally, this is the time for an unencumbered evaluation of the situation. I am asking the Commission to simply do the right thing and deny it.

LYLIA CLARK, 1148 Hazelwood My home borders the south of the emergency exit access road, the west side of the Shriner proposed development. I am speaking for a group of Country Acres Homeowners and neighbors and we are here to support the Shriners development. However we strongly object to the bike path being put in that would connect A and C park sections, both of these areas are very small and are currently being used only by the homeowners so we don't see any value in opening this up with a bike path for anyone else.

Over the years we have maintained this. We have been doing it, and we have still plan on doing it. I don't know Mr. Mitchell, I know I have already lost. Anyway, the south end of the development...we have a large quantity of apartments. There is a large crime rate since these apartments have moved in and we just feel this bike path is going to open the access of our homes for even more potential problems. We have had a murder, a decapitation of a woman down there since the apartments have come in. And we just feel in the best interest and the safety of our children we just don't want this. We have meet with the Shriners on this the have agreed to meet with the Park Board and rescind their offer. In conclusion, I'd like to ask that that you object and put it in the Conditional Use Permit that the bike path and no trails be allowed, and as for the dedicated parcels A and C maintenance by the Park Board if the bike path goes in there has been a discussion that the homeowners adopting these areas and maintain them on behalf of the Park Board and the Shriners. The homeowners are and have been doing the maintenance for years. In closing I would like to say the meeting with the Shriner was productive and we feel they will work with us on our concerns.

BARFIELD I didn't detect at the beginning of your speech, do you represent yourself or the owner?

CLARK I am representing a group of homeowners in the Country Acres B addition, neighbors and homeowners and they have elected me to stand up and speak in their behalf. A few of us are here just to hear what is going on.

ROBERT CROOK 1203 Mullbury Place One reason I prefer not to have a bike path, in this location is because it will send a lot of traffic, foot traffic, skateboard traffic and bikes in the like across 13th to the Sedgwick County Park and vice versa. I believe that would be a safety hazard. One of the gentlemen from Spinnaker Cove mentioned, and I believe this is what he said, that the lake is a safety hazard. If that is a quote, I wouldn't buy a house where it is already a safety hazard. And then the people in Spinnaker Cove don't want the land developed on the west side of the lake. When we bought the house at 1977 we researched it and we were told by the Metropolitan Planning Department that this land would never be developed because it was in a flood plain. I understand now it has been raised. That was one reason that we bought the house is because of all this open land. Now there were houses built so it looks to me the old saying "what goes around comes around". If the Spinnaker, this one landowner, what would they do with 60 landowners.

LARRY DEBROT There is one thing no one has covered Spinnaker Coves has been asking to get a light at our access on to 13th Street because of the potential accidents people walking across to get to the Sedgwick County Park, we have been told no, the traffic is too heavy, we can't impair that traffic or anything else. I talked to Paul Gunzelman who was up here earlier from the City department and asked him a question, I said how many feet to have a safe intersection do you need, from that intersection to the bridge in order for the City to see that that was a safe intersection. He calculated at the speed that is allowed on 13th Street there, it would need to be 400 feet. From this intersection to the bridge in order to be safe by the city engineering standards. They have a 100 feet, so that was brought up at the last meeting, no one has addressed it, I thought that should be addressed with Mr. Mitchell's consideration.

JEFF SOWDER, Applicant, I just want to address several issues first off Spinnaker Cove pointed out, or tried to point out that all the offers that have been brought to Midian had not been to our membership. The Board of Directors has authorization to act on behalf of our members and we did act appropriately and it was brought to the Board of Directors meeting as well. One of the things I would like to point out about the lake is currently Spinnaker Coves does not own the entire lake. And while they say is the focal point of their housing unit, it would be, but it would be the focal point for Midian as well. We want that lake to look nice so we can overlook it.

As far as insurance, we have visited with State Farm Insurance going as far as to speak with the underwriting department of State Farm. The problem you raised today is exactly right, it will be the same no matter who eventually comes onto that piece of property. This is because they don't own the entire lake and don't completely surround it. So their insurance probably will be cancelled no matter who purchases that property next. They have had several opportunities to purchase this property, but have always refused to do so. We don't feel like it is our burden as Midian Shrine to find them insurance. We have been able to find insurance and we feel they can confidently do so as well. Mr. Hoskinson has asked about his investment, this man made an investment in this land, and it is time to turn it according to him. You would gain revenue over what this property currently gives you. They say that the property values will go down, there is no guarantees of that as a matter of fact some who really recognize what Shriners really do, it might potentially make their property even more valuable. We would like for you to consider all the facts when you make your decisions.

BISHOP Do you intend to abandon your location downtown?

SOWDER We have an interested buyer in it who has talked to us about perhaps purchasing which we have not acted upon until we know what the status is with the piece of property. We would move our site from downtown to this property eventually. That is our intent.

BARFIELD In our presentation I want to go back to the initial presentation on page 2, here I think I understand, you made reference to the first paragraph the entitlement to the lake, or the current rules were signed by the Spinnaker Board of Directors on March 14, 2001 and recorded with the Sedgwick County register of deed on March 19, 2004.

SOWDER That is 2001, not 2004, that is a typographical error on my part.

BARFIELD Do you have a letter from an insurance company other than the Nautilus that would provide insurance to you?

SOWDER I have a quote from a company in Shawnee Mission Kansas, showing that a quote on the piece of property we have with a premium on it.

BARFIELD Would that be other than Nautilus?

SOWDER The company is Nautilus Company, but if it is going through Shawnee Mission, or a company in Shawnee Mission Kansas there would be certainly licensed to business in Kansas. I guarantee our agent wouldn't put us in contact that wouldn't be able to provide the coverage in the state of Kansas.

MITCHELL In spite of the fact that the residents of Country Acres B are opposed to the public having access to the small pieces of park that was dedicated years ago, and that they are concerned about the use of that access by the public living south of them, I am going to renew the recommendations that a 30 foot public access easement be given as part of this application connecting the two pieces of public park and that the application be approved with that addition.

MITCHELL moved BISHOP seconds, that a 30 foot public access easement be given as part of this application connecting the two pieces of public park and that the application be approved with that addition.

MARNELL Was that a motion to approve this with a 30 foot access easement?

MITCHELL Yes.

SUBSTITUTE MOTION

BARFIELD moved to deny this application.

Substitute motion fails for a lack of a second.

Original Motion carries (10-1). Barfield opposed.

7. **Case No.: ZON2003-66** New Life Christian Church c/o Nick Harris (owner/applicant) MKEC Engineering Consultants Inc., c/o Greg Allison (agent) Request Zone change from "SF-5" Single-family Residential to "LC" limited Commercial with a Protective Overlay on property described as;

Lot 1, Block A, New Life Christian Church Addition, Sedgwick County, Kansas, EXCEPT, that portion platted as Ellson Court Addition, an Addition to Wichita, Sedgwick County, Kansas. Generally located at the southwest corner of east Central and Ellson Street.

MAPC DEFERRED JANUARY 8, 2004, and FEBRUARY 19, 2004

BACKGROUND: The applicant requests a zone change from "SF-5" Single-Family Residential to "LC" Limited Commercial on the approximately 4.72 acres of the New Life Christian Church Addition. The applicant has no specific use proposed for the site. The site is currently developed as a church on the west side of the site, with the east portion not developed. The site is located on the south side of Central Avenue and is approximately 700-feet east of the Greenwich Road – Central Avenue intersection.

There is "LC" zoning on three of the four corners of the Greenwich Road – Central Avenue intersection. The exception is the southwest corner, which is zoned "LI" Limited Industrial. This southwest corner is part of an area largely zoned "LI" Limited Industrial, extending south to Kellogg Avenue/US 54, north to railroad tracks located ½ mile north of 13th Street North and from Greenwich Road, west to Webb Road. The Raytheon/Beech Aircraft Company complex is the dominant development in this industrial area and in fact is one of the largest manufacturing/industrial complexes in Wichita/Sedgwick County.

The northwest corner of the intersection is developed as a bank with a drive through, zoned "LC", built in 1982. West of the bank is a marine dealership, zoned "GC" General Commercial, with a Conditional Use overlay, CU-300, built in 1987. North of the bank is an electrical substation, which is mostly zoned "LC".

The "LC" zoned northeast corner of the intersection is the partially developed 15.75-acre CUP DP-232. This CUP is a mix of commercial and duplex uses. A Saturn car sales lot, built in 2000, occupies the CUP's corner by the intersection. East of the car sales site, still in the CUP along Central, is a retail strip, built in 2001. The retail strip contains a sit down restaurant, insurance office, hair salon, chiropractor's office, a whirlpool – cabinet sales shop and a vacant space. The rest of the eastern portion of the CUP along Central is not developed and sits north across Central from the subject site, ending approximately 1,110-feet from the intersection. The duplex use of the CUP is north of the previously mentioned undeveloped portion. All 11 lots of the duplex use were built in 1999 and are zoned "LC". A large church is located north of this CUP.

The LC" zoned southeast corner of the intersection, is the largely undeveloped 7.76-acre CUP DP-229. Its only development is a convenience store, built in 1999, occupying the CUP's corner by the intersection. The rest of the CUP, with frontage on Greenwich is not developed. East of the convenience store is a credit card gas station, built in 1999. The gas station is zoned "LC". The "LC" zoning extends east of the gas station and across Dowell Street to a vacant lot, which abuts the west side of the subject site.

The subject site's south side contains a large platted floodway. The property south of the floodway is zoned "TF-3" and developed with duplexes, built in 2001. "SF-5" zoning and urban scale single-family residential development, built in the late 1990s is located south of this "TF-3" zoning and also abuts the southeast portion of the subject site. "SF-5" zoning with large tract single-family residences and urban scale single-family residential development are northeast - east and across Ellson Street from the subject site. Large tract single-family residential developments are on both sides of Central, east of the subject site, and were generally built before 1940. The urban scale single-family residential development occurred generally in the late 1970s and early 1980s. Further east along Central, on its south side, located at the mid-mile is a "GO" district with Protective Overlays (POs #33 & #51). This site has a motel and office.

CASE HISTORY: The site was recorded as the New Life Christian Church Addition and recorded with the Register of Deeds July 6, 1990. The south 2.3 acres of the New Life Christian Church Addition was replatted, SUB2000-00056, and recorded with the Register of Deeds, March 6, 2001 as the Ellson Court Addition. The Ellson Court addition was rezoned from "SF-5" to "TF-3", ZON2000-28, and developed into duplexes. ZON2003-66 was considered at the MAPC's February 19, 2004 meeting. The MAPC

recommendation that the staff and agent attempt to resolve some issues with the request and deferred action on the case for 30 days.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Large tract single-family residential
	"LC"	Not developed, retail/office strip
SOUTH:	"TF-3"	Duplexes
	"SF-5"	Urban scale single-family residential
EAST:	"SF-5"	Large tract & urban scale single-family residential
WEST:	"LC"	Not developed

PUBLIC SERVICES: The site has access to Ellson, on its east side, a two-lane asphalt mat local street with open ditches. The site abuts Central, a four-lane arterial, on its north side. There are 10,207 average daily trips on this portion of Central east of the Greenwich-Central intersection. Public water and sewer service are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Office" or "Public/Institutional" development. The "Office" category provides for office developments that furnish business, finance, insurance, real estate, medical, and other professional services usually permitted in office, office park and CBD zoning districts. The "Public/Institutional" uses include government employment centers, libraries, educational facilities, churches, hospitals, private schools, and cemeteries. The Locational Guidelines of the Comprehensive Plan direct office development to be adjacent to arterial streets and that is local service orientated. It also should be incorporated within or adjacent to residential neighborhoods and community scale commercial development. Low-density office use can also serve as a transitional land use between residential uses and higher intensity uses. The "Public/Institutional" Locational Guidelines direct this type of development towards arterial streets. The unspecified use for the "LC" zoning does not conform to the Comprehensive Plan. The locational guidelines recommend that commercial development be located at the intersections of section line roads, not at the mid-mile location.

RECOMMENDATION: Originally the applicant proposed to rezone the eastern 1.2 acres of the New Life Christian Church Addition from "SF-5" Single-Family Residential to "NR" Neighborhood Retail. Staff advised the applicant that they would not support a spot zone on the applicant's property and suggested rezoning the whole site either "NO" Neighborhood Office, "GO" General Office or perhaps "NR" Neighborhood Retail with a protective overlay. These zoning districts recognize that the Comprehensive Plan recommends that the south side of Central between Greenwich and 127th Street East become office use. These zoning districts would allow the church to remain on the site as a permitted use and are more appropriate for a site located approximately 700-feet east of the intersection. These zoning districts are intended for small commercial uses and are often used as a buffer between more intense commercial zoning and residential use. Their range of uses is limited to those with fewer impacts on nearby residential use. The PO with the "NR" zoning would eliminate some of the more intense uses allowed by "NR" zoning, plus implement development standards that are in character with recent zoning patterns in the area. Those development patterns include protective overlays (POs # 33 & #51) on the "GO" zoning district located east of the subject site, at the mid-mile point on Central and the CUP (CUP DP-232) that extends from the northeast corner of the intersection, ending north of the site across Central. These overlays recognize the abutting/adjacent single-family and two-family residential developments that are established in the area, by implementing more than the minimum requirements for screening, landscaping, compatibility setbacks, and signage. The Staff and the applicant could not completely agree on the appropriate zoning for the site.

Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area west of the Central Avenue – Greenwich Road intersection is dominated by the extensive manufacturing/industrial/office complex of the Raytheon/Beech Aircraft facility. The existing "LC" zoned property is located on three of the four corners of this intersection and immediately, abutting, west of the site. Approximately half of the "LC" zoned lots in the area are not developed. Development on the "LC" zoned sites has generally occurred either in the mid 1980s or from 1999 to 2001. Most of the "LC" zoned sites have CUP overlays on them. The "GO" zoned site located at the mid-mile and east of the subject site has several PO overlays on it. Residential development in the area is either pre 1940 large tract single-family residential, late 1970 to early 1980 urban scale single-family residential, late 1990s to the present urban scale single-family residential or late 1990s to 2001 two family residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-Family Residential, which accommodates moderate-density single-family residential development and complementary land uses. The site could be developed with such uses, although its proximity to Central Avenue make this site less likely to be developed as single-family residential. The current use as a church is appropriate for this site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed "LC" zoning as submitted, would require only a minimum of screening, lighting, setbacks, landscaping and signage to be applied to the site, all of which do not consider the abutting and adjacent residential development in the area. Per the locational criteria of the Comprehensive Plan this site is not appropriate for "LC" zoning.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Office" or "Public/Institutional" development. The Locational Guidelines of the Comprehensive Plan direct office development to be adjacent to arterial streets and that is local service orientated. It also should be incorporated within or adjacent to neighborhood and community scale, commercial development. Low-density office use can also serve as a transitional land use between residential uses and higher intensity uses. The "Public/Institutional" Locational Guidelines direct this type of development towards arterial streets. The unspecified use for the "LC" zoning does not conform to the Comprehensive Plan.

5. Impact of the proposed development on community facilities: Access control from the site is not specified at this point and could negatively impact traffic patterns along Central Avenue as well as the physical condition of Ellson, a residential, asphalt mat road with open culverts on either side of it.

If, however the MAPC finds the requested zoning change of "LC" appropriate, Staff recommends the "LC" zoning be covered with the following conditions of PO #133:

1. Signage shall be per Sign Code for the "NR" zoning district, except no building, wall or pole signs shall be allowed along the south, southwest and east property lines.
2. Parking lot lighting elements (i.e. fixtures, poles, and lamps, and etc.), with light poles, including base, limited to 24 feet in height, and reduced to 14 feet within 150 feet of residential zoning. All lighting shall be behind a 20-foot setback along the south, southwest and east sides. Exterior lighting shall be shielded to prevent light disbursement in a northly or eastern direction.
3. Provide a landscaping per the code. Landscaping shall be required prior to the issuance of any occupancy permit.
4. Ultimately solid screening shall be provided along the north side of the platted floodway and the southwest side of the site, where it abuts or is adjacent to residential zoning. The solid screening shall be a minimum of six (6) feet in height. If a portion of the site is developed and the current church use remains on the rest of the site, solid screening will be provided to screen that portion of the newly developed site from the adjacent residential zoning. Screening will be reviewed by the Planning Director.
5. Building walls and roofs must have predominately earth-tone colors, with vivid materials limited to incidental accent, and must employ materials similar to surrounding residential areas. Architectural articulated steel creating texture, shapes and shadows is permitted on the exterior walls within the context as stated in this condition.
6. Provide contingent dedication of 10-feet of utility - sidewalk easement along the Central Avenue frontage.
7. Provide shared access between all development on the site onto Central, with full movement on the existing west drive and restricting the existing east drive to right in – right out. If Ellson Street is to be used only one drive shall be permitted, with shared access between all development on the site onto Ellson. Provide a guarantee for the development of Ellson to City Standards.
8. All utilities installed underground.
9. Trash receptacles shall have solid screening to hide them from ground view.
10. Maximum building height of 35-feet.
11. Prohibited uses on the "LC" lot include; motion picture theaters, liquor stores, tavern and drinking establishments, night clubs, drive through restaurants, hotels - motels, marine facility, outdoor recreational, cemeteries, vocational schools, correctional placement residences, group homes, convenience stores, service stations, vehicle repair limited, car wash, construction sales and service, nurseries and garden centers, safety service, recycling collection station (public), reverse vending machine, outdoor storage and asphalt or concrete plant.
13. The Protective Overlay will not be in effect on that portion of the site that is currently being used by the church, until at such time redevelopment of that site is not a church.

MILLER presented staff recommendations.

It is my understanding that the applicant is comfortable with the "LC" plus the Protective Overlay except for Condition 6 and Condition 7. Condition 6 is asking for a 10-foot utility sidewalk easement along Central Avenue. On Condition 7, I believe they are in agreement with all of requirements except for traffic engineering's request for a cross-lot circulation agreement, and they would like to see this drive (the easternmost existing drive) restricted to right in - right out, and allow this drive (the westernmost existing drive) to be full movement. It is my understanding that the applicant is not agreeable to those conditions, but I think they are agreeable to all the other conditions in item 7.

MCKAY Show me the actual area that you are talking about rezoning?

MILLER They need to include the whole thing.

MCKAY Just that portion or the whole thing?

MILLER The original request was just going to be a little chunk right in here, and we felt like if they were going to do that it needed to do the whole thing.

DUNLAP How do you define earth tone colors?

MILLER We know them when we see them.

MITCHELL What is your recommendation on Ellson?

MILLER If Ellson Street is to be used, it should have only one drive permitted out, and that the shared access between any multiple lots that might be created between this site and the church site; and to provide a guarantee for development to Ellson to city standards. Currently it is not curbed and guttered and it is a map street, so if a project were developed to do a larger segment then they could trigger the guarantee, otherwise it would just sit there.

MITCHELL The guarantee would go down to the south of the property line?

MILLER That would be my understanding. That they would guarantee just along their frontage and that it would be 100%. There is a drainage way that runs right through here.

GENE RATH, MKEC What was agreed was to guarantee only the developable portion, not down to the drainage way.

MITCHELL Who would have to pay for paving the area adjacent to the floodway on the west side?

MILLER It would have to be picked up by the City if it is not included in their portion.

GENE RATH When this was before you there were some questions that Mr. McKay and Mr. Mitchell had about some of these things we talked about, the screening and so on, and I think we addressed all of those and agree with the staff comments should the Planning Commission decide to go with the LC zoning request with the P.O.

Condition 6 deals with the contingent utility and sidewalk easement. We just did not want to give it at this time, to give the option to have the use of that 10 feet. The street is improved. Certainly it may be widened sometime in the future, but it has been fairly recently improved, and 50 feet of street right-of-way is there today and that is certainly sufficient in my opinion for the near and mid-future, so we are asking that that be waived.

The other issue on the driveway is that we would prefer to have the option of a full movement drive in front of the split parcel, probably across the street from Bristol. The plat allows two full movements drives. We understand now that the current access control policy would suggest the drive be no closer than 200 feet to Ellson, and it be right-in - right-out if it's within 200 feet. If you want full movement then 400 hundred feet is needed. This would be an exception to that, but we are asking that the split property have the option of having a full movement drive-in front of it.

Those are the two issues with Condition 6 and Condition 7. The paving came up before you mentioned it again Mr. Mitchell. We suggested options of guaranteeing half of the street full length, including the floodway, or guaranteeing the entire width in front or adjacent to the developable portion. Staff, including engineering was okay with guaranteeing the full width only along the developable portion. The property owner on the east side of the street, who is here and they want to speak, expressed concern about being pulled in, if you will, on a paving petition or something like that. So we suggested paving the full width with guaranteeing it by petition but only adjacent to the developable part, not the floodway.

SCOTT POPPAW, 11619 E Central I live just east across Ellson, across from the church. Mr. Rath has already presented my case. I don't feel I should be in anyway made to pay for street improvements for this special overlay to make them "LC." If I was going to pay I would want it to be "LC" myself, and I understand that that is not wanted through the City, so I don't see any reason why I would be held to pay for their development, to redo the street for their development. That is all. Whatever you decide here, just please don't send me any bills. I am not trying to stand in the way, I just don't want to be helping to pay for the development for the lot or whatever goes on there.

BARFIELD What is the traffic count at that intersection right now?

MILLER Approximately, 10,207 average daily trips.

MITCHELL moved, to approve the application with the staff comments including, Conditions 4, 6 and 7. As far as Condition 7 is concerned, I would add the provisions that they not have access to Ellson, but they should not be required to guarantee the paving of Ellson since they will not have access.

MCKAY The applicant said they would rather have a both directions driveway coming out next to Bristol, instead of the one going west, which is what staff recommends. Do you want to leave it the other way; if they put it on the left it is going through the church property all the time. The way I understand it the applicant wanted to take the east entrance and make it all-purpose and the west right-in, right-out.

MILLER They wanted full movements on both of them, if that is the question.

MARNELL How do you want to handle it?

MITCHELL I am staying with staff recommendation

BISHOP Except no access to Ellson.

REVISED MOTION: To approve the application with the staff comments including, Condition 4, Condition 6, and Condition 7. I would add the provisions that they not have access to Ellson, including Condition 6 would be as part of my recommendation. Staying with staff recommendation, except no access to Ellson.

MITCHELL moved, **HERNANDEZ** seconded the motion, and it carried (10-1 Dunlap).

8. **Case No.: ZON2004-04 -** Jose Marquez (applicant/owner); Robert Kaplan Request Zone change from "RR" Rural Residential to "LI" Limited Industrial on property described as;

The East Half of the Southeast Quarter, except road on East and except part deeded for State Highway, Section 10, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located At the northwest corner of Highway 254 and 127th Street East.

MAPC DEFERRED MARCH 11, 2004

BACKGROUND: The application area is located at the northwest corner of Highway 254 and 127th Street East. The applicant was initially seeking "LI" Limited Industrial zoning on 13.3 unplatted acres that are currently zoned "RR" Rural Residential. At the March 11, 2004 MAPC meeting, the applicant requested a deferral in order to revise the request from "LI" to the "OW" Office Warehouse district, subject to a Protective Overlay. The proposed Protective Overlay contains a list of 10 uses that would be prohibited on the site: private recycling station, public recycling station, recycling processing center, reverse vending machine, utility minor, animal care limited and general, automated teller machine, tattooing and piercing facility and asphalt and concrete plant, limited. No other development standards were included in the proposed PO.

The site has frontage along a sand and gravel frontage road located on the north side of US-254, and to 127th Street, also a sand and gravel road. The application area has the remains of old oil or gas facilities (e.g. tank and large concrete blocks). The site is currently used for cropland.

Surrounding property is zoned "RR" Rural Residential. Properties located to the north, east and south are used for agricultural activities. Property to the west has a residence and an antique shop, and is also farmed.

The purpose statement for the "OW" Office Warehouse district states this district is intended to accommodate office and warehousing activities for the building trades and similar businesses with operating characteristics that do not require highly visible locations or the type of vehicular access needed for retail and high intensity office development. This district is appropriate in areas of the County that have been designated as "urban service areas." Examples of uses permitted in this district include: auditorium or stadium, community assembly, bank, construction sales and service, general office, general retail (subject to conditions), manufacturing limited, outdoor storage, warehousing or wholesale or business services. The "OW" district contains development standards that require any outdoor accessory display or sales activity to be located within 10 feet of the building. Outdoor storage can not occupy required off-site parking or loading areas; shall not exceed 100% of the floor area of all buildings on the lot and items stored outdoors shall not be visible from any adjacent non-elevated street, nor from ground view in any adjacent lot. There is also a prohibition on uses or practices that create a nuisance due to odor, dust, smoke, noise, vibration or other similar cause that is out of character with customary standards and practices. The site is located outside of any cities' urban service boundary.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential, agriculture
SOUTH: "RR" Rural Residential, agriculture
EAST: "RR" Rural Residential, agriculture
WEST: "RR" Rural Residential, residence and agriculture

PUBLIC SERVICES: Public sewer is not available. The site appears to be located within Butler County Rural Water District No. 5's service area. Highway 254 provides access to the site, a regionally and nationally significant divided four-lane expressway that leads to a two-lane gravel frontage road located along the site's south property line. 127th Street East, located just east of the site, also provides access, and is also a gravel two-lane road.

CONFORMANCE TO PLANS/POLICIES: The Sedgwick County Development Guide depicts this site as appropriate for "rural" uses. The rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. Primary location determinants should be based upon the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts, and the degree of compatibility with adjacent uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is zoned "RR" Rural Residential. Area uses are primarily agricultural with widely scattered home sites, and a few retail uses, trailer sales and antique shop. The dominant character of the area is clearly agricultural. There is one site east of the site that was recently approved for vehicle rental and sales, otherwise all other non-agricultural uses are associated with rural home sites.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and could be developed as currently zoned. The site is without public sewer services that could limit the suitability of the site for many industrial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of "OW" zoning would introduce more intensive uses than permitted by surrounding zoning. Without a better idea of the intended uses for the

site, and the ability to create appropriate development conditions, "OW" zoning is likely to detrimentally impact nearby properties.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: County officials have indicated a desire to study this corridor in order to develop more specific development guidelines for Highway 254. Denial of a request that is so out of character with existing zoning and uses would preserve that opportunity to evaluate all land use, zoning and traffic safety issues related with this corridor. The site is zoned "RR" Rural Residential, and the site could continued to be used for permitted uses.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is not in conformance with adopted plans. The rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. Primary location determinants should be based upon the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts, and the degree of compatibility with adjacent uses.
6. Impact of the proposed development on community facilities: With the zone change traffic will increase over current traffic rates that will result in increased maintenance requirements. No public sewer services are available causing the site to use on-site facilities such as a lagoon, septic system or alternative on-site system. Rural water district service may be available to the site.

If the MAPC feels this request is appropriate, then this request should be approved subject to platting within one year:

DALE MILLER Planning staff presented staff recommendations.

MCKAY You referred to a protest. Is that protest the 38% protest petition on the "OW" or on the "LI"? They have not been re-notified?

MILLER The one to the east came in when it was still "LI". The one to the west came in after a phone conversation where I advised them they had dropped it down to "OW".

HENTZEN The house to the west, I see it has an antique business in it?

MILLER It appears to be one of the non-conforming uses from before countywide zoning was established.

HENTZEN Do you know if the owner of that antique business is owner of this property?

MILLER No, it is my understanding that the applicant has bought this site plus the parcel to the north. They own this is what we have been told. The home site with the antique house, and I think the lady is maybe here. They own 10 acres and then there is a larger tract of 70 acres that this 10-acres came out of. It is owned by somebody else, and they are here as well.

HERNANDEZ The protest percent that you showed, how many people or neighbors, residents are opposed, or how far of what radius do you go from that?

MILLER That is 1,000 feet. Scott tells me that he has talked to the owner to the east and advised him that it was "OW" and he was still opposed as well.

MARNELL Why didn't we get a C.U.P. it is over 6 acres of ground?

MILLER I will let the applicant speak to that.

BOB KAPLAN, Attorney, 430 N Market The answer, Commissioner, is because it is not required. But the answer also is if it is the pleasure of this Commission that you see a Community Unit Plan then we will do that also. We discussed that possibility and decided that under the circumstances of this site that the P.O. was adequate. We eliminated the uses that we thought would be offensive to anyone. But if it is the pleasure of this Commission, and if you grant the deferral for that purpose and want to see a Community Unit Plan, Mr. Marquez has giving me unlimited authority to try to get something resolved so he can develop this ground for some use.

Also to add to what Mr. Miller had to say, he talked about the commercial uses that are present, you ought not to overlook the recently approved Industrial Park one mile to the west by the City of Bel Aire, at Greenwich and 254, we now have an approved Industrial Park. That was done under the jurisdiction, not of Wichita, but the City of Bel Aire; but never the less on 254 Highway.

As to the protest at 38 percent, it is true it is 38 percent, but it consists of two protestors. The remainder of the people probably do not live in any proximity to this site. We started on this a year ago, and knew that the County Commission was looking at some type of corridor program. Mr. Marquez has been waiting over a year. There just comes a time when you have to go forward. I understand they want to design a plan, but there is no commencement date, no plan, no consultant, it has never gotten beyond the talking stage.

Mr. Marquez would like to see the property developed, but he initially wanted to do, he wanted an event center. He wanted something similar to Nativity Pine, to the west. He would like an event center, not a club, not a restaurant, not a bar, not a tavern; none of those things, a place where people could have weddings could celebrate anniversaries, birthday parties that type of thing. Initially, I thought, well it could be a Community Assembly too. If you look at the definition of Community Assembly and the Code has a real funky definition of what a Community Assembly is. It has to be a private membership, like the Shriners that came up here before, so we can't do a Community Assembly. That takes this to an auditorium. That is our only option, and an auditorium first

appears in the Office Warehouse. I have tried with a number of members, neighbors, some will talk to me, some won't talk to me. Some would agree to meet, so won't agree to meet. I have been all over the charts on this ladies and gentlemen, and I cannot get any consensus for anything.

My view of this property was predicated and it was focused on the fact that this property was on a 4-lane high speed arterial roadway connecting Wichita and El Dorado, and you know, and I know that eventually that that frontage is going commercial. It is not going to remain a rural residential and agricultural indefinitely. It is going to be eventually commercial. Staff is not interested in having this case open the door. The only thing we can do with it now is Rural Residential or agricultural. We are simply looking for a way to economically use this property, which I think Mr. Marquez has an absolute right to do.

I have offered private covenants. As far as the neighborhood, part of the issue is concern and I know that is not all of it. I have offered private covenants. I have offered restrictions. I offered to drop the auditorium because people thought it was going to be a wild party place, and I don't know what they thought was going to happen. We offered to drop that. I indicated that I would put a term of years before I would consider refilling that use. I have offered to defer it and meet again. I will do a Community Unit Plan. Basically what it comes down to is whether staff's position or whether it is the folks here to speak, is the prevalent opinion we do not want any thing done with this ground. We want it left exactly the way it is, and the way it is absolutely nothing.

We are open on the overlay. We are willing to additional prohibitions of anything that anybody finds objectionable. I guess I could even go to a further to a Limited Commercial, and eliminate the auditorium. What his vision was, my clients vision was for it to have the events center about a 60 x 150 building, about a 6,000 square foot building that could house the events that I discussed, and they would have to bring in a caterer. They would not have a liquor license. That is on the prohibited list.

He also wanted to do some "OW" similar, if you are familiar with some things I did for a gentleman by the name of McFadden east of the Andover, Rose Hill Road on the north side of 54; typical office warehouse, where the electrician has an office but he can store material in the back, or the plumber has an office where he can store materials in the back. We are not looking for heavy uses. We are not doing asphalt plants. We are not doing concrete plants. I understand the materials that people are complaining about the junk that they say that is out there. Mr. Marquez said it is not on his property. It is the property to the north; that owner is not related. I think we are taking a hit for things we have nothing whatsoever to do with.

I guess I am here today, if we can discuss this, even after the public hearing; if the neighbors are willing to do so, those who object, even after the public hearing, if you want to defer action on it, I am willing to meet with them and I am willing to do some site planning. Basically, I don't know if Mr. Marquez wants to speak, but he simply wants to be able to develop his property. We have a market we believe on this highway for Office Warehouse. We also think we can have an event place but we do not think that we should be required to wait on the County Commission.

The folks that I have talked to a few of them, they want to treat 254 like it's a freeway or like it is an expressway. They don't want any access; they don't want any traffic coming on and off. It is not a freeway, it is not an expressway; it is a high speed 4-lane arterial. They object to traffic coming in and out of Mr. Marquez's property onto the highway. I can't conceive of that because the highway is what the highway is. And, it is not going to be an expressway; it is however going to be a commercial corridor. People going to the lake, maybe even some room for a retail shop. Maybe for a marine operation, people going from Wichita to El Dorado Lake. This is no different than I-135. No different than K-96 Highway. No different than US 54. It is going to develop commercially but somebody has to start, and we want to start. We think in a reasonable way with Office Warehouse, and we are very, very susceptible to suggestions or to flexibility. Mr. Marquez said, Bob, I just need to do something with the grounds. I want the auditorium, I'd like to have the "OW." If I can't have that, get me what you can get me and I will work with it. I can't get anyone to agree on anything. That is where I am.

BARFIELD Originally when you applied for the "LI" ...

KAPLAN I did because I was looking at some expense items. I really did not want to subject Mr. Marquez to the expense of a Community Unit Plan. As I looked a little further I found out I did not need a Community Unit Plan, was not required in the "OW" so we dropped it. He never did really have an "LI" intent. The idea was to try to present the gentleman with some economic alternatives zoning, and the "LI" did not require a Community Unit Plan, but at this point he is saying he will to do that if that is what's required.

BARFIELD I guess I can finish my question now. When you applied for the "LI," did you have in mind the auditorium thing you just discussed?

KAPLAN Yes.

BARFIELD That would not fit in with the "OW" zoning?

KAPLAN Is the auditorium permitted use in the OW? I thought I could get by with Community Assembly, and then when you open the zoning book and read that definition you find out that the Community Assembly does not accommodate anybody except for fraternal or private organizations. So that option was out. So I came back to the Office Warehouse. That was about the only option I had left. But he is even willing to scratch the auditorium for now. That is not to say that three or five years he won't reapply, but even that doesn't find favor with these folks. They don't want anything out there, from the neighborhood standpoint. I guess I don't know what staff thinks I ought to do with it. Pasture I guess.

DUNLAP He is the owner, not the contract purchaser right?

KAPLAN Correct.

BISHOP I have a question about public services. Whatever is developed, what is the intention in terms of providing sewer services?

KAPLAN There is not sewer available, that is true; and it would have to be platted, and it would have to go on private system; either private package system, or lagoon system, or standard septic. Whatever might be approved in whatever platting process. There is not a municipal sewer available, that is very true. We have not looked at if it would be a package plant or I guess, we haven't done that soil testing yet. Whether it be septic or lagoon or what the means of private sanitation would be, it would have to be on private facility.

LARRY GURNEY, 6669 N 127th Street East I would be north of this parcel and just a little west. I would like to talk about some of the generalized concerns. I think there are some more particular concerns from the people who are here. We have shared with the staff the concern this entire area is Rural Residential, and that is what most everything out there is and what is appropriate. We understand that eventually with Highway 254 being widened, and it becoming a 4-lane expressway that ultimately there will be some commercial development. But if we take it in piece meal, we are going to get a hodge-podge of things along that highway. The staff wants to come up, and the Commission wants to come up with an overall view of it, and we think that is appropriate. We are concerned with the increase traffic flow. We are particularly concerned with traffic flow with anything like an event center. As Mr. Kaplan noted, this is a high-speed highway. It has a 70 mile speed zone as you are all aware. It is a dangerous highway where you enter on and off of it. It is simply not designed, that intersection is not designed for the traffic flow that would be envisioned, at least that I would envision.

We are concerned also that this parcel of property was sold, at least to our understanding, at the same time that the parcel of property was that is just north of it. And since those two pieces...in fact, before this came up, we did not know that there were two parcels there. As soon as those parcels were sold, and Mr. Marquez has indicated that he is not related to the people that bought the property to the north, but he knows them. Shortly after it was purchased they brought out about 300 cement culverts and laid them out in this wheat field. They brought out chopped up telephone poles and laid them out in the middle of the wheat field. They brought piles of asphalt debris and rock debris. They brought out old semi-dump trailer beds that are setting out there. They built a road, it is our understanding, without the approval of the Commission and these are documented in some of the pictures that were presented for the last hearing. There may not be any connection between these two individuals, but for the neighborhood standpoint it sure appears to be. We are concerned about that.

Final point I would like to make before you and then I will sit down and be quiet, they talked about protest petitions that were filed, and if they were filed when this was an "LI" request or an "OW" request; the notices that we all got for this hearing still say "LI," and it was our understanding that protest petitions that were presented would suffice for this hearing. To the extent that the committee draws a distinction between the two, I can assure you from my conversations from my neighbor's all those same petitions will be filed for this "OW" request and they were with the "LI" request. It is also my understanding that a couple of the landowners, particular those across from Highway 254 just to the south are out of town, and have been contacted and as soon as they get back they will sign the protest petition as well.

BARFIELD Mr. Kaplan stated as far as he was concerned that you, and some of your neighbors just don't perhaps want to see anything done with this property. Would you address that?

GURNEY I can't speak for my neighbors, and I am not here pretending to speak for my neighbors, even though I am a lawyer I just live out there. I think it is foolish to think that there will never be any commercial development out there. I suspect that as the city moves northeast, and as that is developed there will be commercial development whether it's that particular piece of development. I think there will eventually be commercial development whether it is that parcel I don't know, but I am not opposed on the basis of commercial development.

BARFIELD You also said this is not a safe intersection for any type of commercial development, so what do you see changing?

GURNEY I don't know. I can tell you that in the time I have lived out there, and after Highway 254 had become a 70 mph, 4-lane highway, there have been a number of very bad accidents. And they seem to be more at Greenwich Road, which is a paved crossroad and at a higher density area of travel. I think if we get to much development here at this intersection, which is not a paved cross road and doesn't have the same on and off lanes that Greenwich Road does, that we are going to move that traffic problem down right in front of our house. That is what I am concerned about. I don't know what a long-range plan is with respect to those on ramps and off ramps and cuts. But right now I don't think it was designed for that kind of traffic flow, or the traffic flow that I am afraid of.

PETE LAUGHLIN, 12316 E 61ST North Am I opposed to something being built there? No, but I do live right there, and the document says, "what are they going to build" unknown. That scares anybody. That highway is a 70 mph. It is fast. I have been there seven years, and I have seen multiple fatalities. It does have limited access, but as they were saying where the turnouts are, seems to be where the most wrecks are. There are no turnouts at 127th. My wife and I have learned to drive on the shoulders before you ever attempt to get over off the road. But not everybody knows that that travels that. That is a very dangerous corner. On all those corners, from Woodlawn to Towanda, we are killing people regularly up and down that road.

It is going to get developed, but it has to be thought out. I was fortunate to be in Dallas lately, and you don't ever turn into areas like that. There is access. You go over the hill and all the movement is back there. They don't have multiple turns off. Maybe they have dealt with this, I don't know but there has got to be a better way than building another West Street. The "OW" classification permits many uses, and today when I get here I find out they are going to exclude some but not others.

I met Mr. Marquez. He is a very nice man, and I thought he was with his brother, and he told me that they had bought that whole piece of property. It doesn't matter. They were going to build three metal buildings across the front because he was in the metal building business. He was going to rent two of them out. And it somehow got to an auditorium. I don't know what is going in. I think we ought to know. I would welcome good business next to me but I will be here next week asking to have you just turn mine to the same kind of classification cause I have got to get out. I won't have concrete pipes stacked next to me house. I would like to quote something "the golden rules, the zoning and uses and character of the neighborhood;" that is a residential neighborhood, don't take the character of the neighborhood and violate it. Use your own golden rules.

MIKE MCNEIL, Rural Route 3, Wichita Kansas I am opposed to it for the safety issues. I gave cause at the time. I feel the same way on K-96 going out west, and Highway 254 with young kids and grand kids pulling out on that highway. I am offended that the State of Kansas has spent our money to buy these corners. If you'll see the cutback on the corners they have bought all of the corners, both on K-96 and Highway 254 for safety issues and non development of the corners. They knew that it would be a safety problem there for everybody so they bought them and took them back like that. I feel that this shouldn't happen here. We shouldn't have developments on Highway 254 or K96, and I don't know why the County Commissioners are going this route. They are stealing business from El Dorado and Hutchinson. When they want to keep business in Wichita those are expressways.

The average speed on Highway 254 is 70 mph; it is a real safety issue. I think if we develop these roads along these corridors here, we are defeating the purpose. Our tax money that was spent to buy this road and widen it, and buy those corners from those property owners, and I don't think we should do this. I am not opposed to the man; he is a very nice man. I talked to him a little bit. I just think it is a safety issue, and I think we should just leave it alone like the state had designed it to be as you can see right on that corner. They did not want nothing on those corners, and they are all limited access. They are only on mile lines, and the spend a lot of money buying those right-of-ways to limit this down to corners.

BARFIELD You mention the average speed, in your estimation it was 75 mph?

MCNEIL They pass me at 70 all the time, everyday.

BARFIELD I understand that. I just want to ask you, the legislature just passed a law that would possibly increase the speed to 75. Is this one of the highways?

MCNEIL I think it is going to be, and they are going to give the grace period on it. It is going to be 85 mph. That is what the road was built for. I have lived out there for over 20 years, and they get out there for the rural residential stuff, quiet; and then they come out and bought all this. They knew what was going to happen, a 4-lane, it is going to be a main road into Wichita. You can't slow down and turn left, you can't get on, you have to ride the bumpy to bump to get up to speed. We don't do it like in Dallas for some reason. I don't know why. It is a safety issue I think, it is a real safety issue.

JACK JONES, 12002 East 61st Street North I am just wondering about the water usage. They said they were going to go with Butler County rural water. There is a Sedgwick County rural water line running the south edge of that whole property. I was wondering why are they coming from the north end with the rural, Butler County rural water. I just feel that this hadn't been really well thought out yet, with what they are going to be doing there.

KAPLAN Now having listened to those folks, and having listened to the conversation you would think there was room for compromise would you not? You get it. They say they understand that it is going to be developed. I am willing to talk to these folks, I am willing to present site plans, and I am willing to further restrict uses. I have never had a more flexible or willing client than Mr. Marquez, and you would think there would be compromise, but for some reason when we talk or we get to the corridor we come back to "no." We don't want anything done there, and yet it is acknowledged that there is going to be something there.

You are not going to have overall development from Wichita to El Dorado, and to wait on the County, we have been waiting on the County, this is not a high priority. What they have done or what they have suggested and what Mr. Miller has espoused is to put a moratorium on development and have you done that? Yeah, we have done that in the past. Is it appropriate here? No. Is it right? Probably not. What Mr. Marquez wanted to tell you; he is going to tell you that that is not his junk that is out there. He does not even know the gentleman, and he has no relation to that pipe, concrete or whatever, and that is what he wanted people to know. He is very distraught that people think that is his stuff or that he has some relationship with the guy that put it there, because he does not.

I would like to see the "OW," or the auditorium that is his vision. But we will accept amendments if you feel having listened to these folks, that will get anywhere. Mr. Laughlin has a willingness to speak, and I know Mr. Gurney is willing to meet. We are amiable to another deferral. We are amenable to a deferral before you make a decision of 30-days to see if we can come back with. I have offered a private covenant.

BARFIELD I am sure you heard that one gentleman spoke to the fact that you have in the purposed use "unknown." I think you could probably help yourself if you were to put some proposed use in there. In your talk you don't have a specific purposed use.

KAPLAN Yes, if you want.

BARFIELD The neighbors do, not me.

KAPLAN They do. That is fair. The more specificity in the application; we will do that and will meet with them. It would be easier to specify.

BISHOP The intersection at 127th and 61st Street is as it has been described. It has not been designed for lots of pull off traffic. It is not a cloverleaf. It is not or there is no turn lane and so forth. If that were, especially if you have a purposed use that is going to be the kind of venue that would draw a lot of cars and lots of people, it seems like the expense of dealing is something that would need to be addressed?

KAPLAN It is going to have to be, Commissioner Bishop, and if that is the case, and if an auditorium use was left in and the "OW" was approved, then we would plat that property. If it turns out that the entire structure expense makes it uneconomical to do then Mr. Marquez is going to have to face the face that if decel or other traffic improvement are required, and they are beyond his capability or they render the use not economically feasible, then he is going to recognize that; but I can't even get to that point Commissioner because I can't get past the land use problem. If I could get past the land use problem I could get to those other issues, and we could get into the platting, but I can't get there.

BISHOP I think that is one of the reasons that there is more of a desire for comprehensive planning for that corridor has been brought up; is to look at those infrastructures.

KAPLAN I am willing with a deferral. I am willing to go back to Baughman where I have been before and talk to Terry Smith who we have met with, have him look a C.U.P. and address the issues that this Commission wants to address. And if there are infrastructure issues we will address them. If there are water issues; if there are highway improvement issues, we will address them. I don't want to do a \$50,000 engineering study. No, I don't want to do that. I can't afford to do that, but we can address traffic counts. We can address access. 127th Street is really of no consequence. It is a two-lane dirt road. The traffic that is served here is going to come off of 254 Highway, and there is no question about that.

MCKAY On the north side there is a decel and acceleration, you can tell by the way they have taken the right-a-way that was done when the highway was put through there so that should take care of the north side. What I am saying some of this stuff has been taken care of already.

MOTION: Defer for 30 days.

HENTZEN moved, **HENTZEN** seconded the motion, and it carried (11-0).

9. **Case No.: CON2004-09** - C. Tim Harbaugh and Olinda Harbaugh request Sedgwick County Conditional Use for bed and breakfast on property zoned "RR" Rural Residential on property described as;

The North 334 feet of the South 1327 feet of the East Half of the Southeast Quarter of Section 4, Township 29 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located One-fourth mile north of 79th Street South on the west side of Greenwich Road.

BACKGROUND: The applicants, C. Tim Harbaugh and Olinda Harbaugh, are requesting a Conditional Use to allow a 3-bedroom bed and breakfast inn to be operated at their 5-bedroom residence at 7819 S. Greenwich Road. The lot is 10 acres and is located on the west side of Greenwich one-fourth mile north of 79th Street South. The existing house is a two-storey structure with a brick exterior with a steeply sloping shingle roof. A long circle rock driveway connects the house with the road. A variety of accessory structures are located on the property, including a large metal building, a pavilion, a swimming pool, a playhouse, several woodsheds and a detached garage. It has a deep setback of about 150 feet from Greenwich Road, and landscape vegetation buffering the site from the adjacent residential lots.

According to the Unified Zoning Code (UZC), a Bed and Breakfast is an owner-occupied or manager-occupied residential structure that provides rooms for temporary lodging or lodging and meals for not more than 15 transient guests on a paying basis. A transient guest is a person who occupies a room for a period of less than one week at a time.

All surrounding properties are zoned "RR" Rural Residential. The quarter section has eight 10-acre tracts along the west side of Greenwich and the east side is in agricultural use. The subject residence is 135 feet from the residence to the south and 250 feet from the residence to the north. About half the land in the vicinity is devoted to large suburban residences and the rest remains in agricultural use. The property is one-half mile east of the Derby municipal limits.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR"	Single-family residences
SOUTH: "RR"	Single-family residences
EAST: "RR"	Agriculture
WEST: "RR"	Agriculture

PUBLIC SERVICES: Access is from Greenwich Road. Greenwich has a 60-foot half-width right-of-way abutting the application area and is a two-lane paved rural road. The traffic count in 2000 on Greenwich Road north of 79th Street South was 2,635 ADT (average daily traffic). The 2030 projection is 6,000 ADT.

The site is on a private lagoon. It is within the Sedgwick County Rural Water District #3.

CONFORMANCE TO PLANS/POLICIES: The 2001 Sedgwick County Development Guide Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "rural".

The Unified Zoning Code ("UZC") allows bed and breakfast as a Conditional Use in the residential zoning districts in compliance with UZC site requirements for parking, screening, lighting, and compatibility setback standards and with Landscape Ordinance requirements. No specific requirements are included in the UZC for bed and breakfast inn other than the stipulation that it be an owner-occupied or manager-occupied structure.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed and operated in general conformance with the MAPD approved site plan and landscape plan.

2. Construction of improvements shall be completed within one year of approval by the appropriate governing body.
3. The applicant shall obtain all inspections, permits and licenses from the governing body prior to operating the bed and breakfast inn.
4. The owner or the manager of the bed and breakfast inn shall reside in the primary structure.
5. There shall be three rooms designated for the bed and breakfast business and there shall be a maximum of six transient guests at any one time. These rooms shall be shown on a floor plan required for approval by Code Enforcement Office for a change of occupancy to bed and breakfast inn within a single-family residential structure.
6. Signage shall be per code or the following, whichever is more stringent: No freestanding sign shall be allowed. One building wall sign shall be permitted to identify the establishment. This sign shall be mounted on the front facade of the house, be no more than nine square feet in size and be lit with indirect lighting only or no lighting. The Code Enforcement Office shall review and approve the sign as to compliance with the location and materials required.
7. Four parking spaces shall be provided onsite as indicated on the approved site plan, with one space for the owner/resident-manager of the property and three spaces for the guests. The parking area shall be paved, marked and be located in the rear yard of the property behind the main structure.
8. The existing evergreen screening shall be maintained or a screening wall or fence constructed of brick, stone, concrete masonry, stucco, concrete or wood (not including woven wire) at least six but not more than eight feet in height, or solid evergreen screening shall be installed to screen the portion of the rear yard used for ancillary activities with the bed and breakfast inn from the adjoining residential lots. If the property is platted into any additional residential lots, screening per the Unified Zoning Code shall be required to buffer the bed and breakfast inn from any new residential lots.
9. Lighting shall be directed downward and away from adjoining properties and shall be limited to no more than 14 feet in height for any lighting, including the pole, base and fixture.
10. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding properties are zoned "RR" Rural Residential. The quarter section has eight 10-acre tracts along the west side of Greenwich and the east side is in agricultural use. The subject residence is 135 feet from the residence to the south and 250 feet from the residence to the north. About half the land in the vicinity is devoted to large suburban residences and the rest remains in agricultural use. The property is one-half mile east of the Derby municipal limits.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is developed with a suburban single-family residence, and could continue to be used as a single-family dwelling.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The bed and breakfast inn would introduce a nonresidential that is not considered to be an agricultural use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as "rural." The Unified Zoning Code permits bed and breakfast inn as a Conditional Use when it is determined to be an appropriate site for this type of use and when the bed and breakfast inn can meet site development requirements of the Conditional Use and UZC. The conditions of approval are designed to meet these criteria.
5. Impact of the proposed development on community facilities: The impact on community facilities should be minimal so long as all required parking is onsite and is adequately paved and screened from adjoining properties.

DONNA GOLTRY Planning staff presenting staff recommendations.

BARFIELD You did not incorporate the Derby conditions into the conditions here, is that correct?

GOLTRY No, this staff report had been mailed to you prior to the Derby meeting.

BARFIELD The opposition you speak of, did they speak at the Derby hearing?

GOLTRY Yes they did.

HENTZEN Did the Derby Planning Commission approve?

GOLTRY Yes, subject to the change of deleting Condition 6 and not allowing signage.

HENTZEN Approved, subject to that one recommendation?

GOLTRY Yes.

HENTZEN Let me ask you one other thing is there any sufficiency to okaying it for 6 people?

GOLTRY That is what the applicant requested. That is the way the application came in.

HENTZEN I understand that. But, what if a couple a man and wife, went there but they had a kid with them. Would he have to sleep outside? All I am saying is it is pretty narrow and it doesn't make any difference if there is 3 people or 4 people or 5 people on the use of that property. It is a big property as are all the other around it. I just wanted to know why you got on 3?

GOLTRY It was limited 3 bedrooms, 6 guests.

TIM HARBAUGH, 7819 S Greenwich, Derby Kansas, applicant My wife and I just purchased this property and would like to, upon my wife looking at it, we decided that it would be a nice idea to have a bed and breakfast. So hopefully we will be able to do that. I don't think this would disturb any of the neighbors. Of course, we would not ever want to do anything to cause the neighbors any concerns. The neighbor to the north and the neighbor to the south, Steve Hutchinson and Don Mayberry, are the two that spoke at the Derby Planning Commission meeting. Subsequent to that, we invited them over and talked to them, and they no longer have any concerns that I am aware of.

MCKAY Does he agree to the no signage recommendation, the other recommendations?

HARBAUGH Yes.

RANDY LANDEN, PO Box 565, Derby I have previously lived adjacent to the property they are talking about, and have purchased property around the corner and am building a new house there. I know that you don't care where I used to live, but I am just telling you I have a long history in the neighborhood. My wife and I have a financial commitment to that particular neighborhood. One of the reasons that we moved there initially and are rebuilding in that area is because we like being a rural neighbor, being out and away from people a little bit but still having a benefits of a neighborhood. We are a little concerned about bringing a private business into a rural residential neighborhood because what it does is it brings in. I hate to use the word transient population, but it brings a steady stream of people into the neighborhood that, quite frankly, we are not used to having. It takes away from some of that feeling of safety you have when you know your neighbors and you know what is going on around them.

I guess the only thing I would ask is that you consider how you would feel in our situation--if you lived close to this house, lived in a rural residential neighborhood, have invested everything you have earned to live in the country, and to have that changed into kind of a business area. I realize that is it just one business, but non-the-less it is still a business in a rural residential area. I appreciate the Derby Planning Commission listening to this, but I would ask that you disregard recommendations from people who do not have a significant investment in the neighborhood. With all due respect, they do not have the investment that we do.

MOTION: To approve subject to staff comments with the condition of the recommendation from the Derby Planning Commission to change Condition #6 to prohibit signage.

BARFIELD moved, **BISHOP** seconded the motion, and it carried (10-0).

10. **Case No.: ZON2004-08** – Sisters of St. Joseph c/o Mark Kuhn (owner); Via Christi Regional Medical Center c/o Bob Lavelle (applicant); Baughman Company c/o Terry Smythe (agent) request Zone change from "TF-3" Twofamily Residential to "GO" General Office on property described as;

The north 331.00 feet of the west 285.00 feet of the NE 1/4 of the SW 1/4 of Section 26, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except the west 30.00 feet thereof, TOGETHER with the south 331.00 feet of the north 662.00 feet of the west 285.00 feet of the NE 1/4 of said SW 1/4, except the west 30.00 feet thereof, TOGETHER with Lot 2, Block A, University Hill Second Addition to Wichita, Kansas, except the east 1.77 feet thereof platted as part of Sister of St. Joseph Fourth Addition, to Wichita, Sedgwick County, Kansas, TOGETHER with that part of Laird Avenue as dedicated in said University Hill Second Addition lying west of and adjacent to the west line of said Sisters of St. Joseph Fourth Addition, TOGETHER with that part of Block B in said University Hill Second Addition lying west of and adjacent to the extended west line of said Sisters of St. Joseph Fourth Addition, and TOGETHER with all of Nevin Street as dedicated in said University Hill Second Addition. Generally located on the northeast corner of Clifton and Bayley.

BACKGROUND: The applicant requests a zone change from "TF-3" Two-Family Residential to "GO" General Office on a 5.2 acre unplatted tract located at the northeast corner of Clifton and Bayley. The applicant proposes to construct a one story brick office building to house the computer networking center and associated staff for Via Christi Regional Medical Center (see attached site plan and elevation drawing). The proposed use is first permitted in the "GO" General Office zoning district. The applicant also has filed a plat (St. Joseph 6th Addition) for the subject property that is scheduled to be heard by the MAPC at the conclusion of the rezoning hearing.

The surrounding area is characterized by a mixture of residential, institutional, and medical-related uses. The predominate uses in the area are the Sisters of St. Joseph Convent that is located north and east of and immediately adjacent to the subject property and

the Via Christi Regional Medical Center St. Joseph Campus that is located one block south of the subject property. The abutting property to the north is zoned "TF-3" Two-Family Residential and "GC" General Commercial and is developed with a convent. The "GC"-zoned portion of the property located to the north was rezoned to permit a heliport for the St. Joseph hospital. The abutting property to the west is zoned "B" Multi-Family and is developed with a medical support office building. The properties located to south across Bayley and to the west across Clifton are zoned "TF-3" Two-Family Residential and are developed with single family residences.

CASE HISTORY: The subject property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"TF-3" & "GC"	Convent, heliport
SOUTH:	"TF-3"	Single-family residences
EAST:	"B"	Medical support office
WEST:	"TF-3"	Single-family residences

PUBLIC SERVICES: The subject property has frontage along Clifton and Bayley, which are both paved residential streets with no traffic volume data available. Planning staff estimates that the proposed use will generate approximately 30 trips in the peak hour; therefore, the Access Management Policy indicates that a traffic impact study to determine necessary street improvements is not required. Public water and sewer service are available to serve the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Institutional" development. The proposed office use would have similar and possibly lesser impacts than an institutional use. The MAPC has an informal policy of supporting business expansions onto abutting property rather than requiring relocation, and the applicant currently has medical support offices located on the abutting property to the east.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting the property within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of residential, institutional, and medical-related uses. The predominate uses in the area are the Sisters of St. Joseph Convent that is located north and east of and immediately adjacent to the subject property and the Via Christi Regional Medical Center St. Joseph Campus that is located one block south of the subject property. Given the existence of large scale institutional and hospital uses in the neighborhood, the requested zoning is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "TF-5" Single-Family Residential, and could be developed with residential uses; however, the subject property is a logical location for the expansion of the existing medical support offices located on the abutting property to the east.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code and the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Institutional" development. The proposed office use would have similar and possibly lesser impacts than an institutional use. The MAPC has an informal policy of supporting business expansions onto abutting property rather than requiring relocation, and the applicant currently has medical support offices located on the abutting property to the east.
5. Impact of the proposed development on community facilities: Existing community facilities are sufficient to support the additional proposed development with completion of any improvements required through the platting process.

SCOTT KNEBEL Planning staff presenting staff recommendations.

TERRY SMYTHE, Baughman Company This is an infill project. Anytime you have infill there is change to existing neighborhoods. Things that were open, vacant and flat for, years get developed. We understand that in this case it is a data center that is going to be associated with the building next door that is part of Via Christi. The land is still owned by the Sisters of St Joseph, so I think you have some great known quality operators. The building, if you look at the site plan, the building is located approximately 100 feet east of the wrought iron fence that you see here, so there is a very large setback. It is in the site plan as to how close it is to the street on the west side.

BISHOP My question is about sidewalks. I see the way the site plan is figured and so forth, and I see Bayley Street and Clifton Street. Is there an intention to have sidewalk on either side?

SMYTHE We are guaranteeing the sidewalk.

BISHOP On both streets Clifton and Bayley?

SMYTHE Yes.

GAROFALO There would not be a lot of traffic in and out of there will there?

SMYTHE About one third of the building is computers, the data center. There will be approximately 20 employees. Maybe once or twice a week a vendor will come in to service the computers, but that is it.

HENTZEN There is an access to that existing building that is there now. Will you have to put an access on Clifton, or can you leave that wrought iron fence up?

SMTYHE We will leave the wrought iron fence up. The existing drive that serves the existing building will be the drive for this building. We also have a detention pond that will be located north along the fence line. I think we are going to improve the drainage overall compared to what it is now, because there is no detention.

ELEANOR WELCH, 1023 S. Yale, Wichita, KS 67218 I have with me the materials that I collected almost 26 years ago when the Sisters of St Joseph put in a petition to designate the area along Clifton down to Lincoln as "B" zoning. All the residents really objected. There is a little neighborhood in there of houses all up and down Clifton.

The hospital is really wrecking us. You see so far the "B" zoning has stopped at Zimmerly because they were denied that "B" zoning down. They built the office building Bayley next to the convent where they had "B" zoning, because when then they applied for zoning for their sisters rest home, they got enough to build this building, so we compromised, and they built the building along Bayley near the residents. The zoning stops there, so now they are requesting zoning from there to Clifton all the way up to their drive. Every resident, I am sure, would oppose the "BB" zoning, because "BB" zoning has a way of spreading. Once it is up there at that corner, it condemns all the property between. It is a good substantial neighborhood. It has the kind of housing that Wichita needs and likes. It varies from smaller houses to the larger ones and those that have added on. On my block, I live in the 1000 block on Yale, which is almost directly south of their exit on that office building. On my street there are still five of the original owners. That area was built right after the war in the 1950's.

You ask any resident living in that part of Clifton, or in that residential area, if they would like to move and they would say no. There is seldom a house for rent. The Sisters of St. Joseph have brought up a number of the houses. They brought up 3 large ones, and they live in them so they go off the tax rolls. One is at the end of my street, very close to where they are trying to get the rezoning. If you give them "BB" zoning on that long block of property it endangers all of those residents live along Clifton and along my street: a total of about a 100 or a little more dwellings. The kind of residents that are very decent. Check their record. I don't think the police have ever been out there.

It is a quiet nice neighborhood. Two members on my street, young couples that have brought their houses, said they sure would like to come today but they had to be at work at 2:00. It just seems such a shame that they are bigger than we are, and that we have to fight these things like this, when they know full well what they are doing to us. The traffic has not increased that much, thank goodness, so the property owners on Clifton have not had to give up their frontage. It has not really has not brought any noise. Now where they have the office building, they can go directly north for the "BB" zoning, add "BB" zoning for this office building, and go to the main drive, and it would keep it away from Clifton. It would keep it away from Lincoln. If you would poll the residents living out there, every single one would say I oppose that zoning. Most of the like myself are old and could not come today. I made a very great effort to come and speak for them today since some are working and some don't realize the impact this will have on the neighborhood.

RITA FOSTER, 953 S Clifton This picture that you see, that is what I see every morning that I wake up. In the morning when I look out, I see the beautiful pastoral land across from me and I just purchased this home a year ago, and that was one of the biggest attractions. We do have some traffic, ambulance traffic, on Clifton on a regular basis, which is something that after a year I have gotten used to, but it is something that not everyone in Wichita has an ambulance go by 4 or 5 times a day. We already have some traffic from Via Christi. We have the helicopters landing over by the where the nuns live. It is an interesting site, but it is also something that doesn't happen in everybody else's neighborhood, but we have gotten used to. I walk my dog almost every day, and I would love to see some sidewalks. I don't want to give up my view for a additional building to be put up so that I can have a sidewalk. I don't mind walking in the street with my dogs. They mind very well. The portion that they are attempting to have rezoned is all the way across to Lincoln, but from the pictures I see that has nothing to do or very little to do with the existing building, and it did sound like what they are intending is possibly some day to continue to build, and this picture that you see now won't be a large bit of ground but it will be buildings. This picture shows you almost all the way to Lincoln, and that would be where there would be buildings in the near future. I am not terribly young, but I do intend, I have been in the house a year, I would like to be there until I retire, but I feel like I am speaking for a lot of people in the neighborhood that couldn't be here also. I wanted to let it be known my feelings or what some of the feeling is and that is it. Thanks you for listening.

SMYTHE It is infill project. It is a change for the neighborhood. I personally believe with the owner of the property being the Sisters of St. Joseph and Via Christi, who have complimented the neighborhood with the building that they have out there, that this is going to be the best use that can concur out there. I would have loved to have the field by my house remain vacant, but unfortunately 10 years ago it became a highway. I think this is the best alternative. The property is zoned for duplexes. We are taking the building 100 feet back away from the street to try to mitigate any impact that might be had with this structure. We think this is a good location. We think these will be good neighbors.

BARFIELD This is going to be one story building?

SMYTHE Correct, 16 feet tall.

DUNLAP We are using the terms synonymously, the Sisters of St. Joseph and Via Christi, and the time I have spent out there in that building that exists now, it is not Via Christi. It is the Sisters of St. Joseph operation center. Is the data center going to be for Via Christi and the Sisters of St. Joseph or just the Sisters of St. Joseph?

SMYTHE Sister of St Joseph as I have been told will still own the property and Via will use this as data center.

DUNLAP The reason I asked the question I have spent quite a bit of time in that building and it is a very, very nice building I am trying to figure out if Sister of St Joseph will build it and use it, then it will be pretty nice but then I have been in some that I was not too pleased with.

SMYTHE It is going to be for Via Christi only.

BISHOP This will provide sidewalks along Bayley Street and Clifton Street. My memory of the subdivision meeting is that they asked for no sidewalks along Bayley Street, and that was the way we approved it, which explains why there was a no vote, because it was mine. Perhaps I misunderstood things at the time, but I want to make that clear and get it in the record now that the way it was presented to us today is with a guarantee for sidewalk along Bayley and Clifton.

KNEBEL Actually you are referring to Item 4-10, which is the next item. Condition F of that says that the applicant will be providing a sidewalk certificate requiring sidewalk upon construction of the joining sidewalks.

BISHOP So I have the cases mixed up?

KNEBEL No item 10 is the zone change, Item 4-10 is the next item on the agenda, and that is the plat where the sidewalk requirement is contained. We can take them together. That would be fine.

MARNELL Are there sidewalks on the opposite side of the street on both Clifton and Bayley?

KNEBEL I don't know.

HENTZEN No there are not.

MARNELL So you are amending your motion to include the plat as well?

HENTZEN Yes.

MOTION: To approve Item 10 and Item 4-10 and the findings contained in the staff report.

HENTZEN moved, **DUNLAP** seconded the motion, and it carried (10-0).

11. **Case No.: CUP2004-06 DP219 Amendment #1** – Dillon Real Estate Co., Inc., c/o Richard Russell (owner/applicant) Baughman Co. PA, c/o Russ Ewy request Amendment to The Auburn Hills Commercial Community Unit Plan on property described as;

Lot 1, Auburn Hills Commercial Addition, Wichita, Sedgwick County, Kansas. Generally located On the southeast corner of 135th Street West and Maple

BACKGROUND: The applicant requests an Amendment to DP-219 The Auburn Hills CUP to change the signage provisions of the CUP for Parcel 1. The subject property is zoned "LC" Limited Commercial and is located on the southeast corner of the Maple Street – 135th Street West intersection. The subject property is developing as a Dillons grocery store.

The applicant proposes to amend General Provision #8(E) and to add (G) to General Provision #8; both to be applied to Parcel 1. General Provision #8(E) currently states that the signs for Parcel 1 "shall not exceed 20-feet in height nor shall the sign face exceed 96 square-feet". The applicant proposes to amend General Provision #8 to allow signs to be 25-feet in height and to allow the sign face to be 150 square-feet. The proposed addition of (G) General Provision #8, would allow pylon signs, with rounded extruded sheathing and a front elevation of twice the dimensions of the side elevation. General Provision #8 currently permits "monument type signs only".

The subject site is one of the three "LC" zoned corners at the Maple Street – 135th Street West intersection. The remaining, northwest corner is zoned "GO" General Office. The intersection's four corners are partially developed with a medical/dental office (zoned "GO" General Office, with PO#1 & PO#11) on the northwest corner and a retail/office development (zoned "LC", with CUP DP-225) on the southwest corner. The "LC" zoned northeast corner (with PO#17) is not developed. The undeveloped property abutting the site's east side is zoned "NR" Neighborhood Retail with PO#130. The property abutting the site's south side is a farmstead and is zoned "MF-29" Multi-family Residential. There is a golf course south of the farmstead and west, across 135th Street West, of the site. The golf course is zoned "SF-5" Single-family Residential. Beyond the nonresidential zoned intersection and the previously mentioned uses, there are recently established and developing single-family residential subdivisions, zoned "SF-5". Agricultural uses are still established in the area and dominate the areas north and west of the residential development located west of 135th Street West.

CASE HISTORY: The property was platted as the Auburn Hills Commercial Addition and recorded with the Register of Deeds November 10, 1997. The Auburn Hills C.U.P. (DP-219) and the associated zoning case, Z-3191 were approved by the Council at their May 7, 1996 meeting. The creation of the Far West Side Commercial Development Policy, which was adopted by the Council, was triggered by proposed zoning that created the Auburn Hills C.U.P. (DP-219) and the Z-3191 application; this CUP reflects the development standards of the Far West Side Commercial Development Policy.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"

Single family residential

SOUTH:	"LC"	Not developed
	"MF-29"	Farmstead
	"SF-5"	Single family residential
EAST:	"NR"	Not developed
WEST:	"LC"	Office/retail
	"SF-5"	Single family residential
	"GO"	Medical/dental

PUBLIC SERVICES: The site has frontage along Maple Street. Maple is improved with four lanes, a center turn lane and decel lanes at the intersection of Maple and 135th Street West. East of the intersection Maple is classified as a 4-lane arterial. Current average daily trips (ADT) are 3,096 ADTs east of the intersection, with projected traffic volumes for 2030 were estimated at 6,800 ADTs. However, it is predicted that if the northwest bypass were to be constructed, traffic volumes would more likely be in the 9,000 to 10,000 ADT range. No improvements are scheduled on the city or County Capital Improvements program for Maple. Water and sewer are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The proposed amendments to the signage regulations are not consistent with the existing CUPs and POs at this intersection. These overlays permit monument type signs only, a maximum sign face of 96-square feet and a maximum height of 20-feet. The proposed amendments to the signage regulations are also not in conformance with the Far West Side Commercial Development Policy, which states, "free standing signs are low, small and monument style".

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by partially developed commercial uses along the Maple Street – 135th Street West intersection, with developed and developing residential uses and a golf course adjacent to them. The area is in far west Wichita and agricultural uses are just beyond the residential and commercial development. The "LC and "GC" zoned four corners of the area all have either PO or CUP overlays. The request is not consistent with these existing overlays' signage provisions.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" with the CUP DP-219 overlay, and is currently being developed as a Dillons grocery store. The proposed changes to the signage regulations may be permitted with approval of the requested CUP amendment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The existing signage provisions of DP-219 are the signage standards that the other CUP and POs have applied to the other three corners of the Maple Street – 135th Street intersection properties. The proposed amendment of DP-219's signage provisions to allow larger pylon signs on this site would possibly trigger request for similar signage on the other intersection's nonresidential properties. The impact on the residential neighborhood would be a visual impact that was not anticipated by the CUP.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The proposed amendments to the signage regulations are not consistent with the original intent of CUP DP-219 or with the Far West Side Commercial Development Policy; CUP DP-219 was the first overlay to reflect the provisions of this policy.
5. Impact of the proposed development on community facilities: The proposed amendment pertains only to signage regulations and has no impact on community facilities.

MCKAY I have to declare a conflict of interest because I am part owner of Auburn Hills, which is the green area just south of this.

SCOTT KNEBEL Planning staff presented staff recommendations.

RUSS EWY, Baughman Company Since the staff report, we had a chance to spend a few days talking with Dillons as well as the sign company and have come up with some alternatives that would better meet current policy. The signage, as well as other development and the restrictions on the far west side of Wichita as he mentioned, have established a 96 square foot cap for signs, free standing signs, at this intersection.

Our initial proposition was to develop the same sign package that was recently approved for 37th and Woodlawn as part of the Whispering Brook CUP. It has a nice aesthetic. It was one of the sign amendments to the CUP up there with a lot of public discussion. We understand the different geographical location of this property and that it is held under a different developmental policy. So what we have discussed is that Dillon owns Parcel 2, which is in the southwest corner, that is currently, or that will be developed, as part of the parking lot for the Dillons store. That parcel was afforded 48 square feet of signage. As we applied, we applied for a 150 square feet sign here and one here (pointing to map). Currently both of those two signs are restricted to 96 square feet. It is our intent now to utilize what would otherwise be wasted signage rights for Parcel 2 and transfer it to the Maple Street sign, allowing a 144 square foot sign on the Maple frontage and retaining, or I should say not alter the signage restrictions, for the 135th Street sign. We had also asked for a dual pylon on style as well as a 25-foot height, a 5-foot height increase over what is currently allowed. Those are two requests that we have decided to drop. So we are not asking for the additional 5 feet of height and Dillons does not have a severe problem with a monument style base provided that it is not counted against our signed area, which is typically not the case.

MITCHELL We keep bumping up against this policy of saying well it was only nine sections and we have already developed that over there. I think we need to at some point go back and take some actions on whether or not we think this is a good policy, the Far Westside of Commercial Development Policy, even for those few locations.

BARFIELD I noticed her they want this sign to conform with the 37th and Woodlawn. Did we make special provisions for that particular signage?

KNEBEL There are special provisions in that CUP regarding signage, but staff's point is that the intersection of 37th and Woodlawn it is different in character than this particular corner.

BARFIELD That sign there then doesn't comply with the original ordinance?

KNEBEL It does. It is more restrictive than the sign ordinance.

BARFIELD In this report you initially say you denied this application, but you said they would present something to our liking. Does that mean you would now be supportive of what he just stated?

SCHLEGEL We think that is a pretty good compromise.

MOTION: To approve subject to the following conditions:

1. General Provision #8E shall be amended to read as follows:

Following is the square footage of sign face allowed for each Parcel:

<u>Sign Face</u>	<u>Height</u>
Parcel 1 (along Maple)	144 sq. ft. 20 ft.
Parcel 1 (along 135 th)	96 sq. ft. 20 ft.
Parcel 2	No monument sign permitted
Parcel 3	48 sq. ft. 8 ft.
Parcel 4	48 sq. ft. 8 ft.

2. The applicant shall submit four 24" x 36" folded copies and one 11" x 17" copy of the amended CUP to the Metropolitan Area Planning Department within 60 days after approval, or the request shall be considered denied and closed.

HENTZEN moved, **DUNLAP** seconded the motion.

BISHOP I was a bit confused. The compromise that was put forward, would that include both monument and pylon sign or monument in lieu of?

KNEBEL It would be 20-foot monuments, 144 square feet total on Maple, 96 square feet total on 135th, between Parcels 1 and 2.

MARNELL I believe your motion was the applicants' modification.

HENTZEN Yes.

MARNELL We have a motion to approve subject to the modifications the applicant made and was agreed to by staff.

BARFIELD I understood him to say the modification was on Maple, but the sign on 135th would not change. Is that not what you said?

KNEBEL Right, that is presently allowed at 20-foot monument at 96-square feet. It would really be not change on 135th except that there would be no sign allowed on Parcel 2. Parcel 2 is going to be a parking lot for the store, so it is not really a separate parcel. It just happened to be platted that way.

MOTION CARRIED: 8-0-1. **MCKAY** abstains.

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12. **Case No.: CON2004-12** – City of Wichita (owner/applicant); MKEC, Greg Allison (agent) request Conditional Use for fire station on property zoned "SF-5" Single-family Residential and "LC" Limited Commercial on property described as;

Lots 59 and 62, Hillside Gardens, Sedgwick County, Kansas

TOGETHER WITH

Lot 1, Fran-Mar Addition, Wichita, Sedgwick County, Kansas. Generally located At the northwest corner of Chautauqua and 21st Street North

BACKGROUND: The applicant is seeking approval of a Conditional Use to allow for the development of a "safety service" (fire station) on property located at the northwest corner of Chautauqua and 21st Street. This proposal allows for the relocation of Station 10, now located at 17th and Grove. This site will improve the fire department's potential to respond to fires and emergency medical situations in time frames that minimize property loss and maximize the delivery of life support services.

The application area is 1.1 acre in size and is made up of three platted lots, one of which is zoned "LC" Limited Commercial while the other two lots are zoned "SF-5" Single-family Residential. The site is currently vacant, but has five drive approaches, two each on 21st Street and Chautauqua, and one on Erie. The proposed development plan depicts one access drive on 21st Street and two on Chautauqua. The Erie Street drive would not serve the proposed fire station. Since the site is platted, re-platting is not required, however dedication of additional right-of-way along 21st Street would be appropriate to meet the current 60-foot of half-street arterial right-of-way standards. A large parking area is to be located on the northern end of the site with bay doors facing both north and south (see attached site plan).

Property to the north is zoned "SF-5" Single-family Residential and developed with a residence; property to east is zoned "GO" General Office and developed with Wichita State University facilities, a day care and a dorm; property to the south and southeast is zoned "LC" Limited Commercial and is either vacant or developed with other public service facilities (police substation and library). Property to the west is zoned "LC" Limited Commercial and "SF-5" Single-family Residential, and developed with a church, retail strip center and a residence.

21st Street, between Hillside and I-135, is a significant commercial corridor that has been improved to five-lanes in the recent past. In addition to 21st Street improvements, there has also been significant public and private investment in the general area in the form of the construction of new buildings, landscaping and the removal of dilapidated structures.

CASE HISTORY: The eastern portion of the application area is platted as Block 1, Lot 1, Fran-Mar Addition; the western and northern portion is platted as Lots 59 and 62, Hillside Garden Addition. The Fran-Mar Addition was zoned "LC" and re-platted in its current configuration in 1972; the Hillside Garden Addition was platted in 1926. BZA 53-77 allowed for an exception to allow off-street parking on single-family residential zoned property. This parking supported a tavern that was located further south on the application area.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family Residential; residence
SOUTH: "LC" Limited Commercial; vacant, police substation; library
EAST: "GO" General Office and "LC" Limited Commercial; day care, college dormitory
WEST: "LC" Limited Commercial; church, vacant

PUBLIC SERVICES: All public services are available to the site. 21st Street is shown on the adopted transportation plan map as a five-lane arterial street. Thirty feet of right-of-way should be dedicated from the Hillside Garden Addition, and 10 feet of right-of-way from the Fran-Mar Addition should be dedicated to meet current minimum arterial street standards.

CONFORMANCE TO PLANS/POLICIES: "Public and Institutional Location Guidelines" contained in the City's "Comprehensive Plan" state that fire and EMS stations should be located in accordance with response time standards established in adopted facility plans. The application area is consistent with the recommendations contained on Figure 4.4 in the "Final Report City of Wichita Fire Station Location Study" completed in February 2000.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the dedication of right-of-way on 21st Street.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property in the general area of the application area is a mix of zoning ranging from "LC" Limited Commercial and "SF-5" Single-family Residential. Uses range from vacant, single-family residential, church, public service and retail commercial. 21st Street, between Hillside and I-135, is a significant commercial corridor that has been improved to five-lanes. In addition to recent 21st Street improvements, there has also been significant public and private investment in the construction of new buildings, landscaping and the removal of dilapidated structures in the general area of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site has split zoning, "LC" Limited Commercial and "SF-5" Single-family Residential. Given the commercial, office and institutional redevelopment that has occurred along the 21st Street corridor, it is unlikely the residentially zoned lot fronting 21st Street is suitably zoned for residential use. This lot would have a better chance of being developed if they were utilized in conjunction either of the adjoining "LC" zoned lots. It is possible the residentially zoned lot fronting Erie could be developed as zoned. The "LC" zoned parcel could possibly be developed as currently zoned, although there is vacant "LC" zoned land just across the street that has remained vacant for some time.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Code required screening and landscaping will mitigate any detrimental effects. The fact that there is only one existing residence, located immediately north of the site, helps reduce any impacts on adjoining properties. The other properties are a mix of institutional, commercial and vacant uses.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Locating a fire station in this location will improve the delivery of fire and emergency medical services when compared the station's existing location at 17th and Grove. Improved services will benefit the neighborhood and the entire community.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The site is consistent with adopted facility plans as the current fire station location study indicated a station near the 21st and Hillside intersection would improve response times.

6. Impact of the proposed development on community facilities: Delivery of fire and emergency medical services will be improved.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **DOWNING** seconded the motion, and it carried (11-0).

13. **Case No.: ZON2004-07** – James and Judy Sauer (owner/applicant); Ron's Sign Company c/o John Saindan (agent) request Amendment to Covenant #28 to eliminate Provision #5 which limits signs to those permitted in the "GO" general Office zoning district in order to allow a sign for a carpet store of a size permitted by the underlying "LC" Limited Commercial zoning on property described as;

Lot 1 Beg SW Cor N 188 Ft E 137 Ft N 22 Ft E 49 Ft S 10 Ft to Pt on N LI Lot 2 W 24 Ft to NW Cor Lot 2 S 175 Ft to SLY Most Cor Com Lots 1 & 2 SWLY 103.36 Ft W 62 Ft to Beg Westview 3rd Add. Generally located North of Maple and west of Ridge Road

BACKGROUND: The applicant requests elimination of Restriction #5 of Restrictive Covenant #28 (see attached) on a 0.7 acre platted tract located north of Maple and west of Ridge that is currently developed with a carpet showroom. The purpose of the request is to allow a sign (see attached) per the underlying "LC" zoning district as opposed to the "BB" (now "GO") zoning district as required by Restrictive Covenant #28. The proposed sign is 17'5" tall and 84.2 square feet in size. Such a sign would be permitted by Restrictive Covenant #28 if the sign were for a multi-tenant building containing at least four tenants. Since the subject property has a single tenant, only a 32 square-foot sign is permitted by Restrictive Covenant #28.

The surrounding area is characterized by commercial development located at the Maple and Ridge intersection. The properties to the north, south, and east are zoned "LC" Limited Commercial and are developed with various commercial uses. The properties to the west are zoned "SF-5" Single-Family Residential and are developed with single family residences. The view of the proposed sign from the single-family residences to the west is blocked by the carpet showroom building.

CASE HISTORY: The zoning of the subject property was changed (Z-3167) from "BB" Office (now "GO") to "LC" Light Commercial on June 6, 1995. The rezoning was approved subject to the restrictions of Restrictive Covenant #28.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Restaurant
SOUTH: "LC"	Home improvement center
EAST: "LC"	Convenience store
WEST: "SF-5"	Single-family residences

PUBLIC SERVICES: Public services will not be impacted by the requested change to sign regulations.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The proposed change to sign regulations is consistent with the "Commercial" designation of the Land Use Guide.

RECOMMENDATION: Based upon the information available prior to the public hearing, planning staff recommends that Restrictive Covenant #28 be eliminated and replaced with Protective Overlay District #135 that contains the following provisions:

1. Uses on the property shall be limited to: all uses permitted under the "NR" Neighborhood Retail district regulations, and a carpet showroom, which will display carpet samples for sale, but does not include the storage or warehousing of any carpet product.
2. A minimum 20 foot landscaped area shall be maintained along Brunswick with solid screening of evergreen trees planted and maintained in this area, except the south 25 feet of the property.
3. A wrought iron fence shall be constructed along the west property line.
4. If lighting facilities are provided, they shall be so arranged as to deflect or direct light away from any adjacent residential zoning district across Brunswick.
5. A maximum of one pole or monument sign shall be permitted. No signs shall be permitted along the Brunswick frontage.
6. A minimum building setback line of 35 feet shall be required along the Maple St. frontage.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by commercial development located at the Maple and Ridge intersection. The properties to the north, south, and east are zoned "LC" Limited Commercial and are developed with various commercial uses. The proposed change to the sign regulations for the subject property is consistent with the zoning, uses, and character of the neighborhood.

2. Extent to which removal of the restrictions will detrimentally affect nearby property: The view of the proposed sign from the single-family residences to the west is blocked by the carpet showroom building, so there should be no detrimental affects on surrounding residential uses. The proposed sign is consistent with the signage on surrounding properties, so there should be no change in the commercial character of the area by allowing the proposed change to the sign regulations for the subject property.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The proposed change to sign regulations is consistent with the "Commercial" designation of the Land Use Guide
4. Impact of the proposed development on community facilities: Community facilities will not be impacted by the requested change to sign regulations.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **DOWNING** seconded the motion, and it carried (11-0).

The Metropolitan Area Planning Department informally adjourned at 5:40 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)